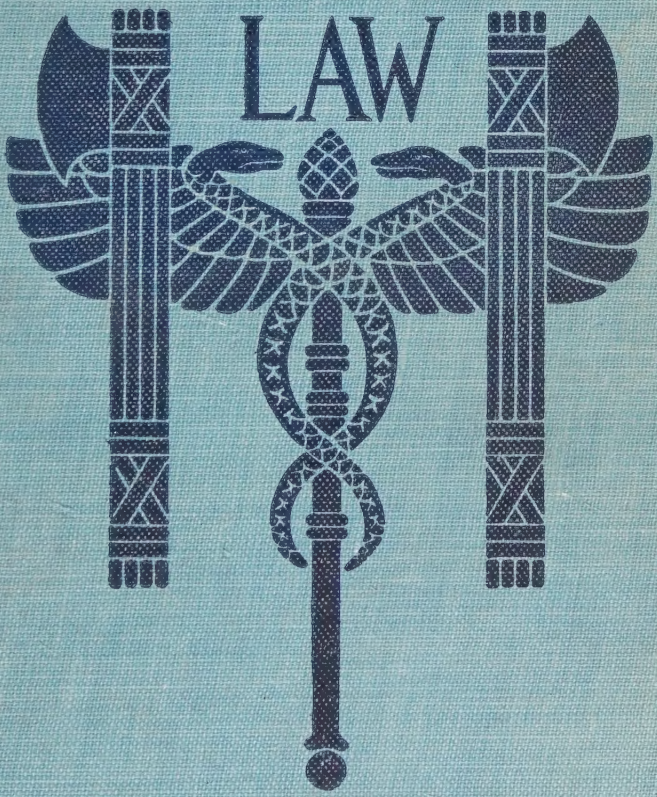
RICHARDSON'S COMMERCIAL LAW



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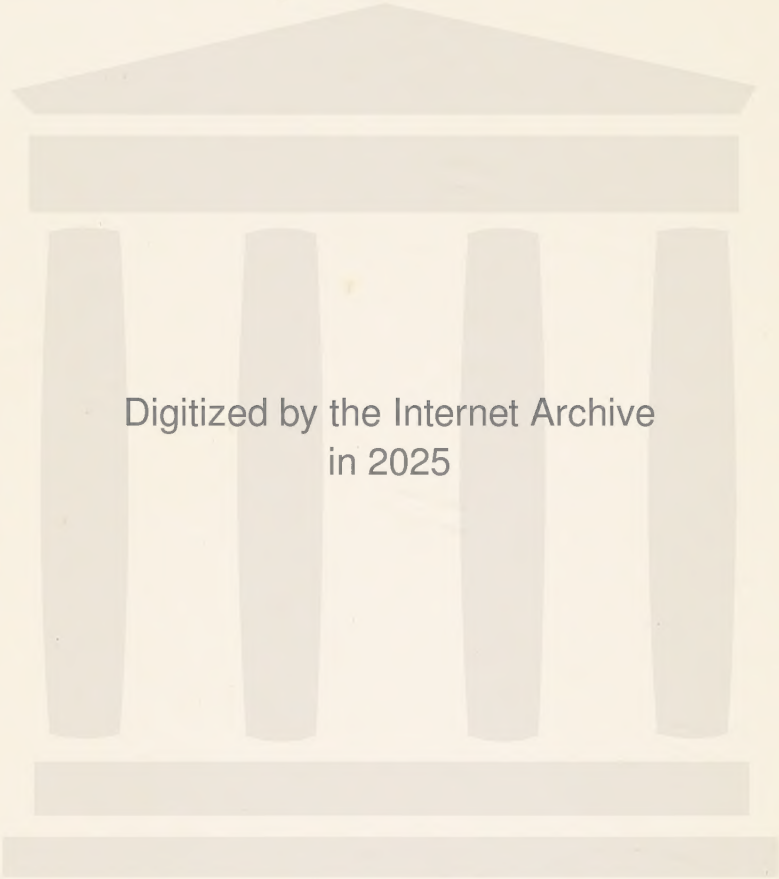
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RICHARDSON'S

COMMERCIAL LAW

A TEXT-BOOK FOR SCHOOLS, COLLEGES AND PRIVATE REFERENCE

BY

W. P. RICHARDSON, LL.D.

Dean of the Brooklyn Law School

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"If one shall enter upon the study of the law under the impression that the extent of his advancement must necessarily bear some relation to the number of hours consumed in reading, and the number of pages devoured, and shall, in consequence of that mistaken impression, hurry over ground when he should proceed slowly, cautiously, and with much painstaking, he must be brought at last face to face with the fact that he is reading to little purpose, and catching but surface views."—JUDGE COOLEY.

"Not so much to endeavor to teach these things fully to you, as to induce you to learn them for yourselves."—JUDGE CURTIS.

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PREFACE.

This book is designed to give the student, the accountant and the business man such a practical knowledge of the principles of commercial law as will enable him to avoid legal complications in carrying on any business enterprise, whether of a simple or complex nature.

No effort has been made to present some of the subjects as fully as has been attempted in many law books. That there are limitations beyond which some subjects should not be attempted in the school room is fully recognized by thoughtful teachers. The lay student, for instance, who is, in his own opinion, sufficiently well versed in the law of real property to examine the title for a piece of real estate will likely discover later that he should have obtained professional service. "A man who is his own lawyer generally has a fool for a client."

THE AUTHOR.

A SUPPLEMENTARY WORD BY THE PUBLISHER.

Since its first publication in 1900, Richardson's Commercial Law has passed through one or more large editions annually. In examining the text notice that the law principles are underscored, which distinguishes them from the less important subject matter; that each principle is illustrated in a "case" which has been passed upon by the courts and that all purely technical matter has been omitted.

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As each of the following subjects are taken up in the body of the text, students should be referred to the special statutory laws of your State which will be found in the Appendix, beginning on page 177: Statute of Limitations; Stay of Execution; Exemptions, Negotiable Instruments Law; Statute of Frauds; Interest; Rights of Married Women; Chattel Mortgages.

These are the only important subjects affected by statutory laws.

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CHAPTER I.

INTRODUCTION.

1. **Law.**—Law is any rule of civil conduct prescribed by competent political authority, commanding certain things as necessary to and forbidding certain other things as inconsistent with the peace and order of society. [2]Law, in its broadest sense, is defined to be a rule of action. [3]As such, it embraces many subjects which do not relate to the civil conduct of individuals, such as the law of gravitation, navigation, cause and effect, etc. [4]In its technical sense, as above defined, it is either *international* or *municipal.*

5. **International Law.**—International law is that rule of civil conduct which is prescribed by the common consent of civilized nations and which regulates their intercourse with each other. [6]As nations cannot sue or be sued by other nations, it follows that the courts have no jurisdiction to enforce rights or redress wrongs for the violation of international law. It rests for its observance and enforcement on the honor of nations.

7. **Municipal Law.**—Municipal law is any rule of civil conduct prescribed by the supreme power of a State or municipality which regulates the intercourse of the State or municipality with its people and of the people with each other. [8]It acts on the unwilling as well as the willing. [9]Courts have power to interpret and enforce an observance of its provisions, and for any violation either to punish the wrongdoer directly or compel him to make due satisfaction to the person wronged.

[10]American municipal law is of two kinds—Common and Statutory.

11. **Common Law.**—Common law is any rule of civil conduct which originated in the common wisdom and experience of society, in time became an established custom, and has finally received judicial affirmance in the decisions of the courts of last resort. [12]It is expressed in maxims, definitions and the judgments of courts. [13]It has been said that judges made the common law. [14]It is also called *unwritten law*, because there is no record of its formal enactment.

[15]To explain its formation, we may suppose a question to have arisen in England, centuries ago, respecting which the written law contained no provision. Upon presenting this question to a judge he would have been compelled to per-

mit a wrong to go unredressed or make a law to meet the emergency. [17]He chose the latter alternative,* and in making up his decision sought light from every available source. [18]If a case exactly similar had been before decided, he would naturally adopt the decision then made, or, if a similar case could be found, he would adopt its principles. [19]If neither of these were available, he would consult public policy and the principles of natural justice. With these aids, and in this manner, he would make his decision.

[20]The common law, thus slowly matured into a system in England, was introduced into this country by the first colonists. When the colonies became independent the system was retained from choice. [21]In all States, except Louisiana, which follows the Roman or Civil Law, the courts have assumed, or the legislatures have declared, the written or unwritten law of England, as it existed at the time of the Revolution, 1776, to be the common law as far as it is applicable to the situation of their people.

22. Statutory Law.—Statutory Law is any rule of civil conduct established and promulgated by the legislative power of a State. [23]It supersedes the common law, and, unless otherwise provided, takes effect from the date of its enactment.

24. Commercial Law. Commercial Law is a phrase used to denote those branches of the law which relate to persons engaged in commerce and their rights to property. [25]As the subjects with which commercial law has to deal are dispersed throughout the globe, it results that this branch of the law is less local and more general in its character than any other. [26]Many of the maxims* and rules are of great antiquity and of the highest value and authority.

[27]Statutory Law takes precedence of and nullifies the Common Law.

[28]An illustration will more effectively point out the difference between common and statutory law and the precedence which one takes over the other in applying the rules of commercial law. A and B, husband and wife, sign a promissory note for $1000. At Common Law the wife would not be liable on the note, because a married woman could not make herself liable on contracts. All her contractual rights were, at the time of marriage, merged into those of her husband. The legislatures of the different States have, however, passed acts (Statutory Law) removing the disability of coverture and empowering a married woman to make contracts either jointly with her husband or alone on which she can be sued.

[29]Because of the nature of the transaction, the law which governs it is called Commercial Law, which is regulated either by the common or statutory law.

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*Alternative.—A choice between two things, so that if one is taken the other must be left.

*Maxims.—Established principles or propositions.

ANALYTICAL OUTLINE OF CONTRACTS.

CONTRACTS.

1. HOW THEY ORIGINATE.

2. ELEMENTS.
   - 1. Offer and acceptance
     - 1. How made...
       - 1. By words....
         - 1. Orally.
         - 2. Writing.
         - 3. Correspondence.
         - 4. Telegraph.
       - 2. By conduct..
         - 1. Signs.
         - 2. Silence.
     - 2. Acceptance to be absolute.
     - 3. Revocation of offer
     - 4. Communication of
       - 1. By correspondence.
       - 2. By telegraph.
   - 2. Incapacity of parties
     - 1. Infancy.
     - 2. Marriage.
     - 3. Lunacy.
     - 4. Drunkenness.
     - 5. Duress.
     - 6. Alien belligerency.
   - 3. Consideration ..
     - 1. Good
       - 1. What constitutes.
       - 2. Will support when.
       - 3. Will not support when
     - 2. Valuable.....
       - 1. What constitutes.
       - 2. Need not be adequate.
       - 3. Gratuitous subscriptions.
       - 4. Forbearance from suit.
     - 3. Insufficient.....
       - 1. Moral obligations.
       - 2. Past consideration.
       - 3. Impossibility
       - 4. Legally bound to do.
   - 4. Subject matter .
     - 1. Gaming and wagering contracts.
     - 2. Contracts made on Sunday.
     - 3. Against public policy ....
       - 1. Public service.
       - 2. Contrary to good morals.
       - 3. Freedom of marriage.
       - 4. Restraint of trade.
       - 5. Pervert court of justice.

3. Fraud.....
   - 1. What constitutes.
   - 2. Remedies of defrauded party

4. Classes .....
   - 1. Record.
   - 2. Specialty.
   - 3. Simple.

5 That must be written .....
   - 1. Promise of executor or administrator to pay debts of decedent.
   - 2. Guaranty for others.
   - 3. In consideration of marriage.
   - 4. Sale of land or interest therein.
   - 5. Not to be performed within one year.
   - 6. For the sale of any goods, wares or merchandise for the price of $48.66, or more, unless—*
     - * 1. Buyer receives part of goods; or,
     - * 2. Buyer pays part of price; or,
     - * 3. Buyer gives something in earnest.

6. How interpreted.

7. How discharged .....
   - 1. Agreement.
   - 2. Breach.
   - 3. Impossibility
   - 4. Operation of law.
   - 5. Performance—payment.....
     - 1. Cash.
     - 2. Bill or note.
     - 3. Tender of.
     - 4. Legal tender.

8. For personal service—what recovered .....
   - 1. When servant leaves without excuse.
   - 2. When rightfully discharged.
   - 3. When wrongfully discharged.

9. To prevent the violation of contract.

CHAPTER II.

CONTRACTS.

30. Definition.—A contract is an agreement between competent parties, upon a legal consideration, to do or to abstain from doing some lawful act. [31]This definition involves the consideration of four distinct topics, called the *elements of a contract,* which are as follows:

1. Offer and acceptance.
2. Capacity of parties.
3. Consideration.
4. Legality of subject-matter.

32. Offer and Acceptance.—The agreement must originate in an offer by one party and its acceptance by another. [33]There are four ways in which it may originate:

[34]1. In the offer of a promise and its acceptance by simple assent. [35]This applies only to *sealed instruments.** [36]A father gives to his son his promissory note, the only consideration being his love and affection for him. [37]The agreement is not enforceable unless the father affixes his seal, because in all simple contracts there must be a valuable consideration. [38]But contracts *under seal* need no consideration, because the seal takes the place of the consideration. [39]In most States a mere scroll with the word "seal" written in it constitutes the seal.

[40]2. In the offer of an act for a promise. [41]A steps upon a street car. That forms a contract. [42]The continual passage of street cars is a constant offer by the railroad company. [43]A accepts the offer by stepping upon the car. [44]When the conductor collects the price of passage he is simply enforcing the contract.

[45]3. In the offer of a promise for an act. [46]A, who loses his watch, offers by advertisement a reward of $25 for its return. He offers a promise for an act. [47]When B returns the watch to A the act is done and the promise becomes binding.

[48]4. In the offer of a promise for a promise. [49]A offers to pay B $100 at a future day if B will perform certain services for him before that time. When B makes the promise asked for he accepts the promise offered, and both parties are bound.

---

*Sealed Instrument.—One authenticated by receiving the seal of the parties thereto. A seal is any device which may be stamped upon wax or directly on the paper, or it may consist of a simple scroll made with a pen. It indicates that the signing of the paper has been done with greater solemnity and care than if the seal were omitted.

RULES WHICH GOVERN OFFER AND ACCEPTANCE.

50. How Made.—An offer or its acceptance, or both, may be made either by words or by conduct. In applying this rule a contract may arise from conduct as well as by spoken or written words; that is, a contract may be made, and not a single word be spoken. Blackstone says, "If I take up wares from a tradesman without any agreement or price, the law concludes that I contracted to pay their real value."

[51]A asks B to remove the snow and ice from the walk in front of his house. B makes no reply, but performs the work. This is a valid contract. The acceptance is made by the conduct of B. [52]A paints B's house. B neither directed the painting to be done nor promised to pay for it. A expected that B would pay, and B knew it, and allowed him to proceed without objection. B will be liable to pay for it. [53]The doing of the work is the offer; the permission to do it, or the acquiescence in its being done, is the acceptance. [54]But it must be remembered that silence does not give consent when the offer is not communicated or made known to the party to whom it was intended to be made. [55]In the above case, if B had no knowledge that A was painting his house B would not be liable, because at the time it was being done he had no power to accept or refuse the services.

56. Communication of Acceptance.—Where the acceptance is not communicated there can be no contract. [57]There must be more than a mere mental determination to accept. [58]A offered by letter to buy B's horse, adding: "If I do not hear from you I shall consider the horse is mine at $200." No answer was returned to the letter, and it was held that there was no contract, though it appeared that B had made up his mind to accept the sum offered.

[59]A person making an offer may prescribe a form of acceptance, but he cannot so word his offer as to turn the absence of communication or reply into an acceptance. [60]The party receiving his offer is not construed (understood) to have accepted it because he makes no response to the offer. [61]A, by messenger, sent word to B that "If I do not hear from you within twenty-four hours I shall consider the house rented to you at $50 per month." B makes no reply. There is no contract.

62. Acceptance to be Absolute.—The acceptance must be absolute and identical with terms of offer. [63]Where the offer directed that the answer be sent to Chicago, and it was sent to Detroit, and there received by the offerer, it was held that such an acceptance created no contract, because it did not comply with the terms of offer. [64]An offer once refused cannot be subsequently accepted without the consent of the offerer. [65]A offered to sell B his farm for $6000. B said he would give $5000. A refused this offer; then B said he would give $6000.

A was no longer willing to adhere to his original proposition. There was no contract, because B's offer to buy at $5000 was a refusal of A's offer.

66. Unaccepted Offer.—An offer unaccepted creates no rights, and may be revoked (withdrawn) or lapse before acceptance. [67]Even if an offer designates a time within which it may be accepted, it may nevertheless be revoked by the offerer before acceptance, unless there was a consideration for keeping the offer open. [68]The exception to the rule is in cases where the offer is made under seal. [69]The seal itself implies a consideration. [70]A may say to B: "If I have to make up my mind now, I must refuse to buy your horse; but if I may have a day to decide, I think I will accept." B promises to give A the time requested. Within a few hours B sells the horse to C. A has no remedy, because there was no agreement to sell, and no consideration for keeping the offer open.

71. Contracts by Correspondence.—Acceptance turns an offer into a contract, and is irrevocable.* [72]It is therefore very important to ascertain the moment of acceptance, or communication of acceptance. [73]No difficulty arises when the contract is made by spoken words or conduct, but it is sometimes a nice question to decide just the moment of acceptance when the mail or telegraph is used as the means of communicating the intentions of the parties. A careful consideration of the following rules is to be observed:

[74]1. An offer is communicated when the letter making it is received by the offeree. [75]It is a continuing offer until then, unless notice of revocation (recall) has been received prior to that time.

[76]2. An acceptance is communicated when the letter containing it is posted or sent. [77]The letter of acceptance may be lost in the mail and never be received by the offerer, but the parties are nevertheless bound by a contract, the existence of which is not affected by the subsequent* fate of the letter. [78]A offered by letter, dated May 1, to sell wool to B; the letter reached B May 3. B posted a letter of acceptance that evening. The following morning B received a letter from A, dated May 2, revoking his offer. A must sell the wool or pay damages, because the letter of revocation was not received until after the letter of acceptance was mailed. The contract was completed when B posted his letter of acceptance. A must be considered in law as making, during every instant of the time the letter is in transit, the same identical offer to B.

79. Contracts by Telegraph.—The same principles govern the communication of offer and acceptance by telegraph as by correspondence. The acceptance is communicated when sent. [80]The only question that calls for consideration in a work of this kind is in case of an alteration of the telegram, in regard to which

*Irrevocable.—Incapable of being changed.

*Subsequent.—Coming after something else at any time.

the decisions are not in harmony. [81]The weight of authority seems to be that if the telegram has been altered the offerer is not bound, because he never gave his assent to it, nor is he bound by the telegram as originally written, because it was never communicated. The same rule and reason applies to the acceptance.

CASES.

The student is expected to refer to the rules as laid down in the text for answers to the following cases. Reasons for each answer must be given:

1. A steps into a ferry-boat. The ferryman rows him to the opposite shore. Is there a contract?[40, 41]

2. A of his own motion sends a crate of strawberries to B, who consumes them. The following day B refuses payment, because he had not ordered them. Can A recover?[50]

3. A wrote to B as follows: "Upon agreeing to finish the fitting up of offices at No. 10 North Chestnut street in two weeks from date, you can commence at once." B began immediately to prepare for the work by purchasing lumber, etc. The next week the proposition was countermanded, and B sued for damages. Can he succeed?[58]

4. A newspaper was regularly sent by mail to B, who had not ordered nor subscribed for it, but who did not refuse to take it from the postoffice or letter-carrier, and did not direct its discontinuance. Is he liable for the price?[50]

5. A jeweler, without authority to do so, sends a watch to B, and writes: "After giving the watch a ten days' trial, if it is not returned I shall consider it sold." B does not return the watch. Is the jeweler entitled to recover its value?[59]

6. A telegraphed to B asking upon what terms he would sell a quantity of coal. B named the price. A replied that it was too much. B then named by telegram a lower price, and went into some details. A replied, "You can consider the coal sold, subject to some terms, which we will arrange next week when I arrive in Baltimore." B afterwards refused to deliver the coal. Is he liable for breach of contract?[62]

7. A offers goods to B at a certain price, and gives B until 4 o'clock in the afternoon to make up his mind. About 2 o'clock A received a better offer for the goods and sold them. B sued A for breach of contract. Can he succeed?[66]

8. A says to B, "At present I do not know, but a refusal of your offer for the sale of your oranges for a certain time may be worth something to me. I will give you $5 to keep the offer open until tomorrow." B accepts the offer. Is A bound to keep his offer open?[67]

9. A had in his possession a horse belonging to B, and on September 1 wrote B, offering $140 for the horse. The letter was received September 3. B accepted the offer by letter mailed on September 4. On the same day A wrote revoking his offer. The letter of acceptance and revocation passed each other in the mails. Upon these facts is there a valid contract?[76]

10. A had been negotiating with B for the purchase of fifty rifles, but no agreement had been reached when A telegraphed to B, "Send me three rifles." The telegram as delivered read, "Send me the rifles," and B shipped fifty rifles, and sues A on the contract for their value. Can he recover?[81]

CHAPTER III

CAPACITY OF PARTIES.

82. General Rule.—As to parties who may contract, the general rule is that all persons who act freely and voluntarily, and are of sound mind and of full age, are competent to contract. [83]There are, however, certain classes of persons who are not competent to contract. This disability may arise from (1) infancy, (2) marriage, (3) lunacy, (4) drunkenness, (5) duress, (6) alien belligerency.

84. Infancy.—All persons are infants in contemplation of law until they have arrived at the age of majority, which is, in most of the States, twenty-one years for both sexes. In many of the States females reach their majority at the age of eighteen.

[85]Until this period arrives they are subject to certain disabilities, imposed for their protection, on the ground that until their majority they have not sufficient maturity of mind and faculties to act with judgment and discretion in the practical affairs of life.

[86]A person is of full age the first instant of the last day of the twenty-first year next before (preceding) the anniversary of his birth. If, for example, a person were born any hour on the first day of January, 1878 (even a few minutes before 12 o'clock of the night of that day), he would be of full age at the first instant of the 31st day of December, 1898, although nearly forty-eight hours before he had actually attained the full age of twenty-one years, according to days, hours and minutes. There is in law no fraction of a day—the day having commenced, it is considered as ended.

87. Contracts that Are Binding.—Contracts of infants are not void, but voidable, and hence capable of ratification, subject to the following exceptions, which are binding on the infant:

[88](1) Contracts for necessaries.

[89](2) Executed contracts of marriage.

[90](3) Contracts for the maintenance of his family.

[91](4) Contracts to bury any member of his family.

92. What Are Necessaries.—The law defines the necessaries for minors to be board, apparel, medical aid and instruction, suitable to his circumstances in life. [93]Nothing is considered *necessary* if he has already been supplied with similar articles, and it is immaterial whether the person supplying the infant did or did not know of the existing supply. [94]Money is not considered one of the

necessaries; hence, for money borrowed by him, even if expended in the purchase of necessaries, he is not liable. [95]If a minor be maintained by his parents he cannot contract for necessaries.

96. Pledging His Father's Credit.—A boy nineteen years of age bought a watch, and promised the merchant that his father would pay for it. The merchant sold the watch on credit of the boy's father. The merchant cannot recover of the father, because a boy cannot pledge his father's credit.

97. Ratification and Voidance of Minors' Contracts.—Contracts made between a minor and adult are binding upon the adult, but voidable at the option of the minor. [98]The minor can avoid or ratify it on becoming of age. [99]He can sue, but cannot be sued on any breach of contract to marry. The same doctrine is applicable to mercantile transactions. What will amount to a ratification has not been definitely determined. [100]Common law authorities hold that if the minor at age neither assents nor dissents it will be a ratification.

[101]Where contracts relate to the sale of goods, retaining and using them after attaining majority is evidence of affirmance.

[102]The question of avoidance may arise in four different classes of cases:

[103]1. A contract executory on both sides may be rescinded or declared void at the will of the minor, and no rights will attach. [104]A minor contracted with an adult for the purchase of his horse, to be delivered in ten days. At the time of delivery the minor refused to take the horse. The adult has no remedy. [105]If the adult had refused to deliver it the minor would have cause for an action against him.

[106]2. If the contract has been executed on the part of the minor only, he may disaffirm (annul) and recover the consideration passed from him. [107]Using the same illustration, if the minor had paid the money for the horse when the contract was made, at the time of delivery he could refuse to take the horse, and also recover from the adult the money paid.

[108]3. If the contract has been executed or performed on the part of the adult only, and the minor refuses to execute or perform his part of the contract, and has in his possession any article or consideration received under the contract, the adult is entitled to recover it, but if the minor has parted with the article or consideration the adult cannot recover it.

[109]In case the adult had delivered the horse to the minor, who was to pay for it in ten days, and the minor in the meantime had sold the horse and at the end of ten days refused payment, the adult has no remedy. He could not compel payment. [110]If the minor had the horse still in his possession the adult could recover it.

[111]4. If the contract has been executed on both sides, the minor cannot, when personal property is involved, disaffirm or avoid the contract and recover the

consideration passed from him without restoring the benefits or consideration received by him, and if the minor cannot restore the consideration or benefit the right to rescind (annul or cancel) is lost. [112]The minor buys the horse of the adult and pays for it. The minor may, by returning, or offering to return it, rescind the contract and recover the purchase money. [113]If he cannot return the horse the contract is binding.

[114]A minor may be a partner of an adult, with the rights and powers of a partner, but he cannot he held individually liable for the contracts of the firm unless he affirms them after attaining his majority. [115]When a minor withdraws from a partnership he cannot recover the capital invested, because he is unable to return the consideration which he has enjoyed.

116. Wrongful Acts.—While an infant is not civilly liable on his contracts before he attains his majority, he is criminally liable for all his wrongful acts or crimes after he is fourteen years of age the same as an adult.

117. Married Women.—At common law husband and wife became as one person. The wife's existence was merged into that of her husband.

She could, therefore, make no contracts, except where her husband was:

[118]1. Civilly dead, i. e., banished, transported or undergoing penal servitude.

[119]2. An alien residing abroad.

[120]3. Divorced from her absolutely.

[121]4. A lunatic, and so found on inquisition.

[122]The States, by statutes, have removed many of the common law disabilities, thereby extending the powers of married women to contract the same as if they were unmarried.

123. Lunatics.—The contract of a lunatic, i. e., a person incapable of understanding the nature and effect of a particular contract, is voidable; hence capable of ratification. [124]He is liable for necessaries supplied him. [125]If the contract be executory it will not be enforced against him. But a contract which has been completed or finished, and which is fair, reasonable and made with a party who did not know of his lunacy, will be binding if the parties cannot be placed in the same condition as before the contract was made and the lunatic has had the benefit of the consideration. [126]While the contract of a lunatic is voidable at the option of the lunatic, yet it is binding on the other party. Everybody is presumed to be of sound mind and sane until adjudged or proven to be insane by proper authority.

127. Drunkenness.—A contract made with a person who was intoxicated to such an extent as not to know what he was doing, or the consequence of his act, is voidable at the option of such person. [128]The contract may be ratified when he becomes sober, and when so ratified it cannot afterwards be avoided on the ground that the contract was made when the party was intoxicated.

129. Duress.—A contract obtained by duress is voidable at the option of the party upon whom the duress has been practiced. [130]Duress is a personal restraint or fear of personal injury, or of imprisonment. [131]It must be sufficient in severity to overcome the mind and will power of a person of ordinary firmness. [132]Actual violence is not necessary to constitute duress.

[133]A and B imprisoned C by locking him up in a room until he signed a contract for the purchase of 50,000 shingles. C can avoid the contract, but A and B cannot if C chooses to hold them.

134. Alien Belligerency.—In the United States an alien born out of the jurisdiction of the United States, and who has not been naturalized. [135]An alien enemy is one who owes allegiance to the adverse belligerent when two countries are at war with each other. [136]An alien enemy can make no contract with a citizen of this country during hostilities, because he would thereby be enabled to withdraw from the country its resources of defense and to convert them to purposes injurious to its interests. Suppose the United States and England are at war with each other. During hostilities A of Boston contracts to buy of B of London $100,000 worth of crockery. Neither A nor B can compel a performance of the contract.

CASES.

(Give reasons for answers.)

11. A boy of nineteen purchased and presented to his sister a piano, for the payment of which he gave his note. When sued upon the note he pleads his infancy. Is this a good defense?[97]

12. An infant who has been admitted as a partner into a firm upon payment of $2000, finding the partnership unprofitable, withdraws from the firm and seeks to recover the $2000. Can he succeed?[115]

13. An infant bought of an adult a bicycle for $120. Paid cash $60, the balance to be settled in thirty days. After using it two weeks the infant disposed of the wheel to a third party, and the adult sued the infant for the balance. Can he recover?[108]

14. An infant borrowed of an adult $50 with which to buy food and clothing. Can the adult recover of the infant the money loaned?[94]

15. An infant bought a horse and buggy of an adult, who was to deliver same the following day. In the meantime the adult received a better offer and refused to carry out his agreement, whereupon the infant sued him. Is the adult liable on his contract?[105] Could the infant refuse to accept the horse, and not make himself liable on contract?[104]

16. A and B, husband and wife, and each owning property in his and her own name, signed a note for $1200. Afterwards A lost all his property. The wife refusing payment, they were sued. Should the holder's claim be satisfied from the wife's property?[29] (See introduction.)

17. A held B's note, which had been outlawed. While B was in a state of intoxication A procured from him a new note. Is B liable on his new promise?[127]

CHAPTER IV.

CONSIDERATION.

137. Definition.—A consideration is defined to be "the material cause which moves a contracting party to enter into a contract." [138]An agreement without a consideration is utterly void, and no action can be maintained upon it. It goes to the very root of the contract.

[139]There are two kinds of considerations, i. e., good and valuable.

140. What Constitutes a Good Consideration.—A good consideration is founded on natural love, affection or esteem. [141]As between immediate parties, it is sufficient to support an executed* contract, but it is not sufficient to support an executory* agreement. If a father expressly promises his son, in consideration of natural love and affection, that he will furnish him, as a gift upon his arriving at age, with $10,000 to engage in business, and upon arrival of his son at age he does accordingly furnish him with the promised capital, he cannot afterwards, upon changing his mind, recover the money he furnished. The contract in such a case is said to be *executed* and beyond revocation or annulment. If, when the son arrives at age, the father refuses to keep his promise, the son cannot maintain an action against him for a refusal, because a good consideration will not support any executory or future undertaking. [142]All executory undertakings must be supported by a valuable consideration.

143. What Constitutes a Valuable Consideration.—The test of a valuable consideration is whether or not a party to whom a promise is made does something, or promises to do something, because of the promise or offer thus made. If he does there is an agreement, supported by a valuable consideration, which is enforceable whether it is executed in whole or in part, or entirely executory. An uncle promised his nephew that he would pay the expenses of the latter's European tour, and the nephew, relying upon the promise, made the trip, expending his own money. It was held that he was entitled to recover the sum from his uncle, because the nephew did that which he would not have done but for the promise of the uncle.

144. Various Illustrations.—A client expressly agrees to pay his attorney $500 for certain professional services, and the services are rendered in entire con-

*Executed.—Finished; completed; nothing remains to be done.

*Executory.—Unfinished; not completed; something yet remains to be done in the future.

formity to the contract. The client cannot escape his obligation to pay the stipulated fee on the ground that the services were not valuable to him, because the attorney did that which he would not have done but for the promise made to him. A gave his promissory note to B for $1000 in consideration that B should name his child after A. The contract is enforceable. "When a party," said the Court in this case, "contracts for the performance of an act which will afford him pleasure, gratify his ambition or please his fancy, his estimate of value should be left undisturbed, unless, indeed, there is evidence of fraud." An uncle promised his nephew $5000 if the latter would refrain from drinking liquor, using tobacco, swearing or playing cards or billiards until he should become twenty-one years of age. The nephew having accepted the offer and performed his part of the agreement, was held to be entitled to recover the promised sum from his uncle. He forbore, because of the promise made to him, to do that which he otherwise was at liberty to do.

145. **Consideration Need Not Be Adequate.**—The law does not inquire whether the benefit to the promisor, or the injury or detriment to the promisee, is equivalent to the thing to be done or received by the other party. If the Courts should pass upon the question of the adequacy of the consideration for the promise they would be engaged in making bargains for the parties, a proceeding which would violate the fundamental principle that there should be the utmost liberty in the making of contracts. "The value of all things contracted for," says Hobbes, "is measured by the appetite of the contractors, and, therefore, the just value is that which they be contented to give."

146. **Gratuitous Subscriptions.**—When a gratuitous subscription has been made it is binding if advances have been made or liabilities incurred upon the faith thereof. A subscribes $500 for the purpose of erecting an Athenæum in the city of New York, to be paid when the whole amount of $25,000 should have been subscribed. The committee having obtained the required amount, and having made contracts, erected and completed the building, relying upon the good faith of the subscribers, makes A liable on his subscription.

147. **Forbearance from Suit as a Consideration.**—The abandonment of a right, or a promise to forbear from exercising it, is a good consideration for a promise, but it is not sufficient unless the person forbearing really believes he has a case; so that a forbearance to sue on an unfounded claim is not a good consideration. A had a *bona fide* claim against B, and put it into the hands of a lawyer for collection. The lawyer exhibited it to B and his father, C, and said he was going to bring suit. Thereupon the father took from his son a bill of sale of his son's property. When A heard of this, he said to B "that he was going to send the sheriff up that day; that he was not going to stop for the bill of sale; it was all a

fraud." C, the father, replied, "You keep quiet and you shall have your money; I guess I am worth it." A, relying upon this promise, directed his lawyer to stop further proceedings, and this forbearance was held to be a sufficient consideration for the father's promise. There was the offer of a promise for an act: the doing of the act is the acceptance of the promise and completes the contract. In other words, A did that which he would not have done but for the promise of the father.

148. Insufficient Considerations.—It remains to point out certain resemblances of consideration which the Courts have refused to allow to support a promise. They may be classified under four heads:

[149]1. Moral obligations.

[150]2. Past consideration.

[151]3. Impossible considerations.

[152]4. Promise to do what a party is bound to do.

153. Moral Obligations.—A party may make a promise, because he believes himself to be under a moral obligation, either because he has received benefits in the past, or from motives of piety, delicacy or friendship.

A student having refused the payment of a loan made him by the principal of the college, the latter wrote the student's father, who replied that he would pay the sum loaned, although he was under no obligation for his son's support. The father is morally, but not legally, bound by his promise, because the consideration is past, and a past consideration will never support a promise. In other words, the principal of the college did not do anything because of the promise made to him. Had the promise of the father been made before the money was loaned, and the principal made the loan because of said promise, then the promise would have been enforceable because the principal did that which he would not have done but for the promise made.

154. What Is a Past Consideration?—Where a person receives a benefit, and, at the time such benefit was received, he incurred no liability, and subsequently he makes a promise to pay for such benefit, the consideration for such promise is said to be past. A furnishes B board and room gratis for the winter. In the spring B promises to pay for the accommodations received. His promise is unenforceable, because when he received the benefit he was under no legal liability to pay for the same.

[155]It is very essential that the student should remember the following important exception to the above rule, viz.: If there has been some pre-existing legal obligation which cannot be enforced because barred by the Statute of Limitations, such legal obligation is a sufficient consideration to support a new promise to pay such a debt. A becomes indebted to B January 1, 1891, in the sum of $500. On February 1, 1894, B sued A, but failed to recover, because A had been released January 1, 1894, by the Statute of Limitations, which is three years. (See table,

Chap. XXVII.) If A, although not obliged to, had promised to pay the debt at any time after he had been released, then the pre-existing legal obligation would be sufficient consideration for the new promise.

156. **Impossibility.**—A promise to do a thing impossible in fact or in law is not a consideration: hence the promise upon which it is founded cannot be enforced. But the impossibility must be natural or physical, not merely personal to the promisor. The fact that its performance will be difficult is no excuse.

157. **Promise to Do What a Party Is Bound to Do.**—Another form of insufficiency of consideration arises where the alleged consideration is a promise to do or actually doing what a man is already bound by law to do for the promisor. The promisor gets nothing more than he is already entitled to. Therefore he is not bound to fulfill his promise, even though it was this that induced the other party to do what he did.

[152]Thus, where in the course of a voyage from Philadelphia to West India and back two seamen deserted, and the captain promised the rest of the crew that if they would work the vessel home he would divide the wages of the two deserters among them, this promise was held not to be binding for want of consideration. Before they sailed from Philadelphia they had undertaken to do all they could under all emergencies that might arise during the voyage. The desertion is to be considered an emergency of the voyage. The sailors promised no more than their contract already bound them to do. A promise to compensate an officer in consideration that he makes an arrest is void, because the counter-promise of the officer is no more than he is already bound to do.

CASES.

(Give reasons for answers.)

18. An uncle told his nephew that he would pay the latter's expenses of a pleasure trip to Europe. The nephew, because of said promise, made the trip, expending his own money, and sued to recover such sum from his uncle. Can he succeed?[143]

19. A diamond ring was sold to an infant by A, who expected B, the infant's father, on whose credit the ring was sold, to pay for it. B had not authorized his son to purchase on his credit, but subsequently promised A that he would pay for the ring. Can A recover from B?[153]

20. A promised to give $300 to a charitable society provided a like sum should be paid by other parties on or before a certain date. Such amount was duly paid in. Is A's promise enforceable?[146]

21. In consideration of natural love and affection a father gave to his son his promissory note payable in one year for $1000. Payment being refused, the son sued his father. Can he succeed?[141]

22. A promises to pay B a debt of $100, which has been outlawed by the Statute of Limitations. Is his promise enforceable?[155]

23. A gratuitously renders services for B. Subsequently B, believing that A ought to receive some compensation for same, promised to pay him $200. On that promise A sues B. Can he recover?[154]

24. A sold B a horse and buggy worth $300 for $10, to be delivered in ten days. Can A compel B to fulfill his agreement or pay damages for breach of contract?[145]

25. A shipped B ten barrels of sugar. The transportation company, through mistake, delivered it to C, who refused to give it up. A friend of C's agreed with B to pay the latter $25 if he would abandon his law suit against C. Is this promise enforceable?[147]

CHAPTER V.

LEGALITY OF SUBJECT-MATTER.

159. Meaning.—This is the last element in the formation of contracts which remains to be considered. It is the *legality* of the thing to be done or omitted. Instead of naming the contracts parties are permitted to make, we shall name those which the law forbids and which, if made, the Courts will not enforce. These Illegal contracts may be divided into three classes, viz.:

[160]1. Gaming and wagering contracts.

[161]2. Contracts made on Sunday.

[162]3. Contracts against public policy.

GAMING AND WAGERING CONTRACTS:

163. 1. Gaming.—A contract between two or more persons by which they agree to play by certain rules at cards, dice or other contrivance, and that one shall be the loser and the other the winner, i. e., billiards, lottery, backgammon, cock-fighting and betting thereon, etc.

164. 2. Wager.—A contract by which two or more parties agree that a certain sum of money or other thing shall be paid or delivered to one of them on the happening or not happening of an uncertain event. If the contract between the parties is a *bona fide* contract to buy and sell, the law will sustain it, but where it appears there is no real contract of sale, and that the whole transaction is to be settled by the payment of "differences," the contract will be set aside.

[165]At common law gaming and wagering contracts were valid, but statutes have been enacted in all the States declaring such contracts to be unlawful. Wagering contracts remained in force in England up to 1845, when Parliament passed an act making them void.

[166]A general summary of the statutes in the United States is as follows:

[167]1. That any security given for money lost by betting is void.

[168]2. That money lost at a gaming table may be recovered as a common debt.

[169]3. That no money or other thing won by betting can be sued for.

[170]4. That wagers on elections are prohibited, and money deposited thereon is forfeited.

171. **Contracts Made on Sunday.**—The common law does not prohibit the making of contracts on Sunday; therefore contracts made on this day are valid unless they are expressly forbidden by statute. [172]The statutes usually declare that contracts to do work on Sunday which is not necessary are void, but a contract made on Sunday to do work on a week day is valid. All contracts for the sale of goods, wares and merchandise on Sunday are unenforceable. [173]When a contract has been performed on Sunday it is as valid as if made on a week day. A sold B 100 boxes oranges. The following day B endeavored to have the sale set aside and recover his money because the contract was performed on Sunday. He cannot succeed.

174. **Contracts Against Public Policy.**—If the subject-matter of a contract relates to the performance of an act which will be detrimental and injurious to the citizens of a community and the public in general the contract is void. And this is true even though it can be shown that neither party will lose or suffer from its fulfillment. The question in this class of contracts is not whether the parties to the contract are injured, but whether or not the public rights are prejudiced.

[175]The following are some of the most important classes of contracts which are void, because against public policy:

[176]1. Agreements tending to injure public service or good government.

[177]2. Agreements which are contrary to good morals.

[178]3. Agreements which affect the freedom of marriage.

[179]4. Agreements on restraint of trade.

[180]5. Agreements which tend to pervert the course of justice.

181. **Agreements Tending to Injure Public Service or Good Government.**—An agreement by a candidate to share the emoluments* of a public office in consideration of aid in securing his election is void. Lobbying contracts are void. They are agreements to render service in securing legislative action through personal influence with public servants and through other objectionable and sometimes corrupt means. A promised B, a congressman, $500 in consideration that the latter procure for the former the contract to furnish army supplies to the government. B, according to the agreement, procured the coveted contract, but he cannot enforce payment by A, because the contract is void as against public policy.

*Emoluments.—That which is received as a compensation for services, as salaries, fees, etc

182. Agreements which Are Contrary to Good Morals.—Where the undertaking on either side is to do or permit to be done something decidedly immoral, as prostitution, making indecent books or pictures and the like, the law will not aid either party in enforcing performance. The immorality must be of a marked character, for the law does not observe a fastidious* delicacy. In general, only those contracts are held void for immorality which the precedents have settled to be immoral, a question not always open to discussion. If the contract in such cases has been executed the Courts will not rescind it, and, if executory, will not enforce it. A, the author of an obscene manuscript, contracted with B, a publisher, for its publication. Relying on B's promise, A made extensive preparations for the sale of the book. B subsequently refused to carry out his part of the contract, which resulted in a heavy loss to A. The law will not aid A in seeking redress. The Courts, in such cases, will leave the parties where they find them.

183. Agreements which Affect the Freedom of Marriage.—The policy of the law is to encourage marriage and to discourage any interference with freedom of choice. Hence agreements never to marry, or not to marry within a given time, which is unreasonable, or not to marry any other than a given person, are void. A wager, in which one man bets another that he would not marry within a certain time, was held to be void, as giving to one of the parties a pecuniary interest in his celibacy.

[184]A promise to pay or do anything in consideration of the promisee's bringing about a marriage is void. Such agreements are called marriage brokerage contracts, and are well illustrated by a recent New York case decided in 1891, the facts of which were that a Mrs. Guion, a widow, who, in her search for a husband, sought the advice and aid of a Mr. Wellman, who was owner and publisher of a matrimonial journal called "The New York Cupid" and the proprietor of a matrimonial bureau in New York city.

[185]Mrs. Guion became a patron of Mr. Wellman's establishment in 1886, and paid the usual registration fee of $5. She was introduced to thirty or forty gentlemen, but found none whom she was willing to accept as a husband, and in 1887, for the purpose of stimulating Mr. Wellman's efforts in her behalf, she paid him $50, whereupon there was executed the following agreement:

"June 2, 1887.

"Due Mrs. Guion from Mr. Wellman $50, August 15, if at that time she is willing to give up all acquaintance with gentlemen who are introduced in any manner by Mr. Wellman."

In August, 1887, Mrs. Guion, not finding a congenial companion among any of the men to whom she had been introduced, and claiming to be willing to give

*Fastidious.—Delicate to a fault.

up all acquaintance with them, demanded from Mr. Wellman the return of the money paid. It was held that she was entitled to its return. Courts will aid a party who has patronized such a business by relieving him or her from all contracts made, and will grant a restitution of any money paid or property transferred.

186. **Agreements in Restraint of Trade.**—It is against the policy of the law that a man should deprive himself of exercising his skill and the means of making a living. Therefore, contracts which restrain a person from engaging in his trade or profession for an unlimited time, or require him to abstain from its exercise, are void. But contracts which restrict the exercise of a trade or profession to a certain locality are valid. The restraint may be unlimited as to time, but must be limited as to space. That is, a person may agree never to engage in the same business in San Francisco or in the State of California, because he can go elsewhere, but if he should agree never to carry on business anywhere, then the agreement is void. The restraint in all cases must be reasonable, and what is reasonable depends upon the nature of the business to which the contract relates.

[187]A few practical cases will make clearer the principle. A contract restraining one of the parties from running a steamer on any of the waters of the State of California was sustained. A contract not to carry on a publishing business within the State of Michigan was upheld as not being an unlawful restraint of trade. An agreement made by a manufacturer of matches not to sell in any of the United States except two was held to be valid.

188. **Agreements which Tend to Pervert the Course of Justice.**—That is, contracts the object of which is to stifle prosecutions or to compound felonies are held to be void upon the ground that public interest demands the punishment of such offenders, and that a man who knows crimes have been committed should not be allowed to make it a source of personal profit, and that the State relies upon such persons to institute prosecutions. A contract to pay an attorney a contingent fee to procure the settlement of a criminal charge is invalid. A father whose son had been guilty of embezzlement gave a mortgage for the amount embezzled in consideration that the mortgagee would not prosecute his son. Is the mortgage valid? No, because the consideration upon which it is based is the doing of an act which is against public policy.

CASES.

(Give reasons for answers.)

26. A gave his note to B for $1000 for money lost at cards. B sues A. Can he recover?[189]

27. A paid B $125 for money lost at a game of cards. Can A recover the money from B?[185]

28. A makes a bet with B for $1000 that the Boston Baseball Club will win the pennant. A loses, and B sues to recover the $1000. Should he succeed?[189]

29. A contracts with B on Sunday for the latter's services as bookkeeper, to begin work on the following Monday. Is the contract valid?[172]

30. A contracted with B for the sale of the former's house and lot to the latter. A refused to sign the deed, because the contract was made on Sunday. Is this a good defense?[171]

31. A horse which A bought of B on Sunday proved to be very unsafe. A returned the horse and sued B for a return of the money. Can he succeed?[173]

32. A promises B $500 in consideration that B procure the passage through the city council of a certain bill. B was successful in his efforts and sues A on his promise. Can he recover?[181]

33. A offered B $5000 if the latter would marry the former's daughter. B accepted the offer and after marriage sued A to recover. Can he succeed?[183]

34. In order that she might have the privilege of patronizing a "matrimonial bureau" A paid B, the proprietor, $25 as a registration fee. Subsequently she sued the proprietor to recover the amount she had paid him. Will the court grant a restitution?[185]

35. A, a physician practicing in Washington, sold to B, by written agreement, "his good will of practice for the sum of $1000, said A agreeing to quit the practice in said city in favor of B." In one year A resumed his practice, and B sued for damages. Can he recover?[186]

36. A, the proprietor of a dyeing and scouring establishment, leased the same to B for a term of twenty years, and for a valuable consideration sold the custom and good will thereof, together with the right to use the same name and style as theretofore; also agreed that he would not at any time thereafter conduct in the city of Denver the trade of dyer and scourer. A subsequently resumed the business, and B sued to recover damages for breach of contract. Can he succeed?[186]

37. A, who had forged B's signature to a check, promised the latter $100 if he would not expose him. Relying upon said promise, B kept quiet. Is the promise enforceable?[188]

CHAPTER VI.

FRAUDULENT CONTRACTS.

189. Definition.—"Fraud is a false representation of fact, made with knowledge of its falsehood, or in reckless disregard whether it be true or false, with the intention that it should be acted upon by the complaining party, and actually inducing him to act upon it." We shall consider these characteristics in detail:

[190]1. There must have been a material false representation, and it is material if the contract would not have been made but for the fraud practiced. Intentional misrepresentation is always fraudulent. But there may be intentional concealment which is not fraudulent. The question, then, is, what kind of knowledge a contracting party may lawfully keep to himself. The Supreme Court of the United States lays down the following rule: "If you have any peculiar or

extraordinary information which the other party, exercising ordinary knowledge and diligence, cannot be presumed to have, you are bound to disclose it, and the concealment of it will be fraud." While the law requires a full disclosure of all material facts necessary to enable each party to make up his mind, the rule here has a reasonable construction. [191]The law will not relieve* against the common inequalities of knowledge, judgment, skill and experience. It allows one party to obtain the advantage when there is no unfairness. In regard to the quality and value of articles contracted for, the rule is that if a defect, fault or imperfection be open and obvious by an inspection, there can be no ground to complain of fraud. But when the defect cannot be easily perceived, the party knowing it is bound to make a disclosure.

[192]2. The representation must be made with knowledge of its falsehood. It is clear that a person who makes a statement, although untrue, is not guilty of fraud, unless he knows it is false. Thus, where a telegraph company, by mistake in the transmission, caused B to ship to England a large quantity of barley which was not required, and which resulted in a heavy loss, it was held that the representation not being false to the knowledge of the company, gave no right of action to B.

[193]3. The representation must relate to a fact, and not a mere matter of opinion. A mere expression of opinion, which turns out to be unfounded, will not invalidate a contract. A representation by the seller that property is worth a given sum is a mere expression of opinion, but a false statement as to the cost of an article is a material fact and fraudulent.

[194]4. The representation must be made with the intention that it should be acted upon by the injured party. It is not necessary that the statement be made directly to the injured party. Thus, false statements made by a man to a commercial agency concerning his financial solvency, or that of his firm, entitles the person who relied upon them to all the remedies of a defrauded party.

[195]5. The other party must have relied on the representation and have thereby been deceived. A bought a cannon of B. The cannon had a defect, which made it worthless, and B had endeavored to conceal the defect by inserting a metal plug. A had never inspected the cannon. When he used it the cannon burst. It was held that B had not committed fraud, because the attempted fraud had no operation on A's mind.

[196]The Court said: "If the plug, which it was said was put in to conceal the defect, had never been there his position would have been the same, for as he did not examine the gun or form any opinion as to whether it was sound, its condition did not affect him." Although this decision has been severely criticised by high

*Relieve.—To free from or set off by contrast.

authority, it is still the doctrine on the subject of fraud. Deceit which does not affect the conduct of a party can hardly create liabilities.

197. Effect and Remedies.—A contract procured by means of fraud is not void, but voidable at the option of the party upon whom the fraud was practiced. The defrauded party has the following remedies:

[198]1. He may affirm the contract and sue for damages, or

[199]2. He may avoid the contract.

[200]If the person defrauded elects to avoid the contract, he must return, or offer to return, what he received under it. But if the thing received has perished, or is of no value, or for any good reason cannot be returned, then the defrauded party may avoid the contract without an offer to return. [201]If, after discovery of the fraud, the party does not rescind* the contract within a reasonable time, his right to rescind will be lost. Certain bonds of A held by B for safe keeping were sold by B and the proceeds used by him. With knowledge of the fact, A accepted and retained a promissory note of B's and others sent him by B for the amount of the value of the bonds sold, and A collected the interest on said note for two years. A subsequently sued B to recover the value of the said bonds upon the ground that B fraudulently contracted the debt, but it was held that the acceptance of the notes under all the circumstances connected with it created a new contract between the parties, and operated as an affirmance and ratification of the fraud practiced by B.

202. Both Parties Guilty of Fraud.—If both parties have been guilty of fraud, neither can obtain relief on the contract. But where both parties are not equally guilty, one having acted under circumstances of oppression, imposition, hardship, or undue influence, so that his guilt may be far less than his associate, then public policy may require that relief should be granted. Thus, where a debtor, in order to induce a creditor to sign a deed, by which the creditor accepts part of the debt due to him in satisfaction of the whole, pays him, without the knowledge of the other creditors, a larger amount than that paid to the rest of the creditors, he may recover back such extra allowance.

CASES.

(Give reasons for answers.)

38. A falsely represented to B that shares in certain silver mines were a profitable investment, and in reply to inquiries falsely asserted that he had invested a large amount in the shares and working capital of the said mines, whereupon B, at the solicitations of A, but not until he (B) had carefully investigated the mines, etc., and relying solely upon his own investigation purchased a large number of shares, which proved to be in fact valueless. B brought action to recover of A

*Rescind.—To annul, i. e., to make void or of no effect.

$2000 which he had paid him on the ground of A's false and fraudulent representations. Can he recover?[195]

39. A, being part owner of a vessel, was authorized to appoint her master. B made application for the appointment. A agreed to appoint him in consideration that he would take one fourth interest in the vessel at her cost price. A fraudulently represented the cost price of the vessel. Is A liable to B for the fraud?[193]

40. A brought an action to recover damages alleged to have been sustained by means of false and fraudulent representations made to him by B, through which he was induced to purchase a half interest in the business of manufacturing artificial marble. The facts were that B represented he was doing a fine business and making money; that he had a contract with St. Vincent Church for $4000, one-half of which was profit; also a large contract at the Capitol at Washington, and a large contract for work with the B. & O. R. R. That the business was a complete failure, and the representations made and through which A was induced to purchase were utterly false. Can he succeed?[190]

CHAPTER VII.

CLASSES OF CONTRACTS.

203. Classes.—Contracts are divided into three classes, viz.: 1. Contracts of Record; 2. Contracts under Seal; 3. Simple Contracts.

204. Contracts of Record.—They are so called because when made are matters of record in court. They are judgments,* recognizances* and supersedeases.*

205. Contracts Under Seal.—A sealed contract is technically called a specialty, deed, bond or writing obligatory. Every contract may be under seal if the parties so elect, but some contracts require a seal, i. e., deeds, bonds, etc.

[206]The law relating to these contracts abounds with technical and arbitrary distinctions, which serve no other purpose than to confuse the mind. According to Blackstone, seals were first introduced because men could not write. Not being able to write, each person had his own particular seal, which he used in place of his signature. Therefore, when writing became general, the reason for using seals ceased; but the custom, nevertheless, continued. Another reason, to show that the original purpose and use of a seal has been entirely lost sight of in modern times, is that we not only never affix a seal without a signature, but where a person cannot write his name, we write it for him, and he ratifies* it. For what pur-

*Recognizance.—In civil cases it is an obligation of record entered into before some court of record that the party will pay the debt, interest and costs recovered by the plaintiff under certain contingencies. *Judgment.—Decision of a court.

*Supersedeas.—A writ directed to an officer that he stay the proceedings at law, or that suspends the powers of an officer in certain cases.

*Ratify.—To approve and sanction something done by an agent.

pose, then, are seals continued in use? The pretense is that they add solemnity* to the instrument. In Maryland a scrawl after the name is all that is necessary to constitute a seal. It is upon this theoretical solemnity of a seal that the distinction between sealed and unsealed writings is founded.

Some of the distinctions are:

[207]1. The seal is said to estop the party, that is, to preclude him from proving anything to the contrary, when by using the same words he could not be estopped.

[208]2. The presence of a seal is said to import or imply a consideration, when the same words without a seal would have no such effect; hence a gratuitous promise under seal is enforceable, but if not under seal is void.

[209]3. A contract under seal being of a higher nature, there cannot be a simple contract and a contract under seal between the same parties on the same subject, because the simple contract will be merged* into the one under seal.

[210]4. Right of action on simple contracts is lost if not exercised within three years, while on sealed instruments it is not barred until after the lapse of twelve years.

[211]5. A surety upon a contract under seal is not released by giving time to the principal unless the agreement for extension be under seal; whereas a mere verbal agreement for extension will release a surety upon a contract not under seal.

212. Simple Contracts.—All contracts not under seal, nor of record, whether they be written or verbal, are simple or parol* contracts.

CHAPTER VIII.

CONTRACTS THAT MUST BE WRITTEN.

213. To Prevent Fraud and Perjuries.—In the reign of Charles II., 1676, Parliament passed an act the object of which was to prevent the perpetration of frauds and perjuries with facility. It has since been substantially re-enacted by the legislatures of most of the States. In some States, however, it has never been re-enacted by the legislature, but simply recognized and adopted by the courts as being a part of the common law. In those States in which the statute was re-

*Solemnity.—Awe or reverence inspired by circumstances; a solemn or formal observance.

*Merged.—Swallowed up, or lost.

*Parol.—A term used to distinguish contracts which are made verbally or in writing not under seal.

enacted the legislatures, in doing so, made some minor changes, but, as a whole, it remains about the same as the original statute. It is generally called "Statute of Frauds." It provides that certain classes of contracts must be evidenced by some memorandum signed by the party to be charged. Witnesses to the agreement will not supply the want of the memorandum.

It declares those contracts to be:

[214]1. To charge* any executor* or administrator* upon any special promise to pay damages out of his own estate.

[215]2. To charge any person upon any special promise to answer for the debt, default or miscarriage of another person.

[216]3. To charge any person upon any agreement made upon consideration of marriage.

[217]4. For the sale of lands, tenements* or hereditaments,* or any interest in or concerning them.

[218]5. Agreements not to be performed within one year from the making thereof.

[219]6. For the sale of any goods, wares and merchandise for the price of $50 unless:

(1) The buyer shall accept and actually receive a part of the goods; or,

(2) The buyer pays a part of the price; or,

(3) The buyer gives something as an earnest to bind the bargain.

220. **What Constitutes a Sufficient Writing.**—The writing is required, not for the existence or validity, but for the evidence of the contract. No formality is required; a mere note or memorandum is sufficient. The memorandum may consist of telegrams or various papers or letters, but they must be connected, consistent and complete. A contract required to be in writing cannot be partly in writing and partly oral.

221. **To Charge any Executor or Administrator Upon Any Special Promise to Answer Damages Out of His Own Estate.** The expression, "answer damages," means to pay the debts of the deceased. An executor or administrator is not liable for the debts of the decedent, the person deceased; that is, he does not have to pay the debts out of his own pocket; his liabilities are limited by the assets of

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*Charge.—To make liable.

*Executor.—One appointed in or by the will of another to execute the will.

*Administrator.—A person appointed by competent authority to settle the estate of one who left no will.

*Tenement.—Any species of permanent property that may be held so as to create a tenancy, as houses, lands and rents.

*Hereditament.—Any species of property that may be inherited.

the decedent. If, in order to save the credit of the deceased, or for any other reason he promises to answer damages out of his own estate, that promise must be in writing, together with the consideration for it. [222]But a promise by an executor to pay an heir a sum of money if he will not contest the will is not within the statute, and, therefore, need not be in writing.

223. Any Promise to Answer for the Debt, Default or Miscarriage of Another Person.—This means a guaranty—to be responsible for a debt for which another person continues to be liable. [224]There must be three parties—the creditor, the principal debtor, and his surety or guarantor. There must be a liability, actual or prospective, of a third party for whom the guarantor undertakes to answer. If the guarantor, instead of making his liability secondary, makes himself primarily liable, the promise is not within the statute, and need not be in writing, because there is no guaranty.

[225]The liability may be prospective at the time the promise is made, as a promise by A to B that if C employs B he (A) will go surety for payment of services rendered. "If two come to a shop, and one buys, and the other, to gain him credit, promises the seller, 'If he does not pay you I will,' this is a collateral* undertaking or guaranty, and is void without it is in writing under the Statute of Frauds. But if he says, 'Let him have the goods; I will be your paymaster,' or 'I will see you are paid,' this is an undertaking for himself, and he shall be understood to be the buyer and the other to act as but his servant."

226. Guaranty Made Concurrently and Subsequently.—One important distinction is to be noted between a guaranty made concurrently with the principal transaction and one made subsequently as to the consideration for the guaranty. A and B go to a merchant, and, on the strength of A's guaranty, the merchant sells B goods amounting to $1000. A is liable on his guaranty; the consideration for the same is the credit given. [227]But suppose the merchant had sold the goods to B, and subsequently requested A to guarantee payment; although A complied with the request, and gave a written guaranty, he would not be liable, because there is no consideration. [228]It must be remembered that the guaranty to pay a subsisting debt, like all other contracts, must have a consideration, even though the promise be in writing.

[229]The debt, default or miscarriage spoken of in the statute will include liabilities arising out of wrong as well as out of contract. A rode a horse of B's without his leave and killed it. C verbally promised to pay B a certain sum in consideration of his forbearing to sue A. This promise is void, because not in writing. [230]Had the promise been reduced to writing it would have been valid, the consid-

*Collateral.—Surety given in addition to the principal promise.

eration being A's forbearing to sue, which, we have already learned, was a sufficient consideration to support an agreement.

231. **Agreements Made in Consideration of Marriage.**—This does not mean the promise to marry, but a promise to pay money or settle property on one of the contracting parties when the marriage actually takes place. A father verbally promised, in consideration of his daughter's marriage, to give her, as a wedding present, a house and lot. After marriage he refused to carry out his promise. The law will not compel him to convey the property to his daughter, because the contract was not written.

232. **Contracts for the Sale of Lands, Tenements or Hereditaments or Any Interest in or Concerning Them.**—This whole subject is one which belongs to the law of real property rather than to the law of contracts. It will, therefore, suffice our purpose to state briefly that all agreements for the sale or purchase of real property must, in order to enforce them, be in writing. The statute also requires that leases of real property for three years or more must be written, but in some States when the statute was re-enacted the time for which oral leases were valid was reduced to one year.

233. **Agreements Not to Be Performed Within One Year from the Making Thereof.**—While the rule as stated is very clear and easily understood, yet by innumerable judicial decisions the construction placed upon it has become extremely artificial. In construing this rule the Courts have held the following verbal contracts to be valid:

[234]1. If the contract is fully performed by one of the parties within the year it will take it out of the statute, and need not be in writing. A, being a tenant of B's under a ten years' lease, promised verbally to pay an additional $20 a year during the remainder of the term in consideration that B expend $200 in alterations. A was held liable upon his promise, the alterations having been made within one year.

[235]2. If the contract can by any possibility be performed within one year, although the parties may have intended that its operation should extend through a much longer period, the statute will not apply; hence the contract need not be in writing. A contract to pay a lawyer for conducting a law suit which might be terminated within a year is not within the statute, although the litigation may continue for two years.

[236]3. The statute does not apply if the death of one party within the year would leave the contract completely performed and its purpose achieved. [237]An agreement to support a child until a certain age, at which the child would not arrive for several years, was held not to be within the statute, because it depended upon the child's life, and if the child should die within one year, would be fully performed. [238]Agreements for service where the term is for more than one year,

or is to begin at a future time, are within the statute, and must be in writing. Thus an agreement to employ a boy five years and pay his father certain sums at stated periods during that time is within the statute; hence to enforce the agreement it must be reduced to writing. Although by the death of the boy the services would cease and the contract determined,* it would certainly not be completely performed. [239]Agreements not to carry on a certain business at a particular place need not be in writing, because, being only a personal engagement, and imposing no duties upon his legal representatives, it would be fully performed if the party died within the year.

240. **For the Sale of Any Goods, Wares or Merchandise for the Price of Fifty Dollars and Upwards.** But if any one of the following circumstances occurs at the time of the sale it need not be in writing:

1. Acceptance and receipt of part of the goods.
2. Payment of part of the price.
3. Giving something as an earnest to bind the bargain.

In some States the price is $30 and upwards; in others $50.

241. **Accept and Receive Part of the Goods** means that the buyer must appropriate to himself a part or the whole of the goods in such a way as to destroy any further claim to them by the seller. It does not mean that in all cases the buyer is actually to handle the things bought. Where the articles are heavy and bulky it is not necessary that they be manually delivered. It is only required in such cases that the purchaser should have complete and absolute control and authority over the thing purchased. If the buyer receives and takes with him a sample, it is sufficient to satisfy the statute. But it must be understood by both parties that the sample was a part of the goods purchased.

242. **Payment of Part of the Price** means that there should be an actual payment of a portion of the purchase price.

243. **Giving Something in Earnest.** The effect of an earnest is to bind the goods sold. Upon payment of the whole price the buyer is entitled to them. But if he does not within the time agreed pay for and take the goods the vendor may resell the same, also retain the earnest money.

244. **What Are Goods, Wares and Merchandise?**—In some cases what are goods, wares and merchandise under this clause is a question of much difficulty, and the decisions of the Courts are not in harmony.

[245]A contract for work and labor is not within the statute, but where one agrees to manufacture an article for another it is often a nice question to determine whether the contract is for work, labor and materials, or for goods, wares and merchandise.

*Determined.—Brought to a conclusion.

[246]The weight of authority is that where work and labor is to be bestowed by the seller upon the thing sold before delivery the contract is for work and labor; therefore not within the statute, and need not be written.

[247]A sold wheat in the stack to B, which was to be threshed by A, the seller before delivery. The contract, being partly for labor, is not within the statute But if the buyer is to perform the labor, then it is within the statute. Thus, if B, the buyer, was to thresh the wheat, the contract must be written.

[248]Shares of stocks, bonds and promissory notes are goods within the meaning of this statute. An auction sale is also within the statute. The auctioneer is the agent of both parties to sign the memorandum.

CASES.

(Give reasons for answers.)

41. A delivers a vessel at B's dock-yard for repairs. The bill for the work is $125. A wants the boat, but B refuses to let him have it until his claim is paid. C verbally promises to become responsible for the payment, whereupon B delivers the boat to A. B sues C on his promise. Can he recover?[223]

42. A and B go into a store. A directs the merchant to let B have goods to the amount of $100. A verbally promises to pay for them. Is his promise enforceable?[225]

43. A bought of B a carriage for $150. When the carriage was delivered A refused to accept it, because it was not the one he had bought. B proved beyond a doubt that it was the one A had purchased, and sued him to recover. Should he succeed?[240]

44. A made an oral agreement with B that the latter should receive employment in the former's store for two years. Is the contract enforceable?[238]

45. A made an oral agreement with B that he would sell to the latter 100 tons of coal at $5 per ton, provided the order for same was received within fifteen months. At the end of thirteen months B put in his order. Is A obliged to deliver the coal?[235]

46. A contracted with B for the sale of his farm to the latter. B paid $100 to bind the bargain. When the time came for signing the deed A refused, and B sued to compel a conveyance. Should he succeed?[232]

47. A sold goods to B. Subsequently A, learning of B's bad credit, requested C to go B's surety. Whereupon C gave a written guarantee. A having failed to collect of B, sues C. Can he recover?[226, 227]

48. A hired a horse and buggy of B, and, by his reckless driving, the carriage was upset and damaged to the extent of $50. C gave a written guarantee to B to answer for damages sustained if he would not prosecute A. Is C's promise enforceable?[229]

49. A made an oral agreement with B not to carry on business in Washington for twenty-five years. Is the agreement binding?[239]

50. A sold to B 1000 shocks of corn, which were to be husked by A before delivery. The agreement was not reduced to writing. Can A refuse to carry out the contract and not make himself liable for a breach of same?[247]

CHAPTER IX.

INTERPRETATION OF CONTRACT.

249. How to Determine the Intention of Parties.—If a dispute should arise over an oral* contract, it is the province* of a jury to determine what the parties said and the terms agreed upon. [250]When a man is proved to have made a contract by word of mouth upon certain terms he cannot be permitted to allege that he did not mean what he said.

[251]When a contract has been reduced to writing the parties thereto cannot add to or vary the terms of the contract. The contract cannot be partly oral and partly written. All previous or contemporaneous* negotiations are merged into the writing, which is considered as furnishing the best evidence of the intention of the parties. [252]One of the exceptions to the above rule which is important for the student to remember is that evidence is admissible of the usage or custom of a trade or locality to add to or explain a term of a contract or to attach a special meaning to the words.

253. Usage.*—The parties are presumed to contract with reference to the usage, and it is as obligatory as if incorporated in the contract. It is for the jury to determine whether the parties contract with reference to it or not.

[254]A valid usage must possess the following characteristics:

1. It must be general and uniform.
2. It must not be repugnant* to or inconsistent with the terms of the contract.
3. The usage must not contravene* the general rules of law.
4. It must be reasonable.

255. Validity of Contracts.—The general rule is that a contract that is valid where made is valid everywhere, and if void where made is void everywhere. [256]As to the interpretation of a contract, the law of the place where the contract is to be performed governs, and not the law of the place where it is made, even though if it were made some place else it would be valid. A and B, residing in Buffalo, where it is the custom for tailors to work nine hours a day, make an agreement whereby A employs B to go to Boston to work, where it is the custom for tailors to work but eight hours a day. The contract contained no conditions as to how many hours B should work a day. The time in Boston will prevail.

*Oral.—Spoken, not written.
*Usage.—A long-continued practice.
*Province.—Province of a jury is its business or duty.
*Repugnant.—Opposed, contrary, inconsistent.
*Contemporaneous.—At the same time.
*Contravene.—To come in conflict with.

CHAPTER X.

DISCHARGE OF CONTRACT.

257. **Considered.**—We have dealt with the elements of a contract, and with its interpretation. We shall now consider how the contractual tie may be loosed and the parties wholly freed from their rights and liabilities under the contract. The modes in which a contract may be discharged are:

258. **Agreement.**—The contract may be discharged by the same process which created it—mutual agreement. A sued B for breach of promise of marriage. B proved that before the breach he and A had mutually agreed to annul the contract; therefore B was released from all obligations.

259. **Breach.**—The contract may be broken. If so, a new obligation connects the parties, that is, a right of action for damages possessed by one against the other. A engaged B, January 1, 1893, to enter into his services as courier and to accompany him upon a tour. The employment was to commence March 1. On February 1 A wrote B that he should not require his services. The contract is broken, and B can sue A at once for damages.

260. **Impossibility.**—The performance of the contract may become impossible by reason of certain circumstances which are held to exonerate the parties from their respective obligations. A sold B an article which, at the time, had ceased to exist. Such a contract is also void upon the ground of mistake.

261. **Operation of Law.** The contract may be discharged by the operation of rules of law upon certain sets of circumstances. A gave B his note for $400. B altered the note so as to read $1400. A is discharged on the note because of the alteration.

262. **Performance.** This is the most usual mode of discharging a contract. Whether what is done amounts to a discharge depends upon the construction of the contract. If the promisee has received that which he had a right to demand the contract is discharged. If the obligation of the promisor is the payment of money, then the debt is discharged by such payment.

263. **Payment by Promissory Note.**— When a note is given for a pre-existing debt it does not extinguish the debt unless it is so agreed by the parties. It simply suspends action until the maturity of the note. Suppose A owes B on account $100. B receives A's note at ninety days, without grace, in payment of the debt. The original debt is not extinguished, but B's right to sue on it, should

the note be dishonored, that is, not paid at maturity, is postponed for ninety days. [264]In the payment of debts by commercial paper it is usually a question of intention whether the parties intended it to act as a discharge of the original debt. [265]It is, however, well settled that when one buys goods and gives in payment another's note, endorsed *without recourse*,* it will act as a final payment and discharge of all liability on the part of the buyer.

266. Tender of Payment.—A tender is an attempt to do what a party promised, but is prevented from so doing by the acts of the other party. [267]When the contract is for the payment of money, in order to constitute a legal tender the full amount must be actually offered. [268]When a tender is made and refused, interest on the debt ceases to run, and the costs, in case of a law suit, are thrown upon the party refusing to accept the money. [269]But the student must remember that a refusal by the creditor to accept the money tendered does not discharge the debt. A, believing his indebtedness to B is $100, tenders him that amount. B claims the amount due him to be $150; therefore refuses to accept the $100 in payment of the debt. B sues A for $150, and gets a verdict for only $100. A will be released from paying interest from the time of tender, and the costs must be paid by B. But had the verdict been for $150, then interest would continue to run and the costs thrown on A, because his tender was insufficient, it not being enough to cover B's claim.

270. Legal Tender.—The debtor must offer to the creditor such money as Congress has declared to be legal tender. It alone has the power to say what that form of money shall be.

[271]Under the present provisions of the United States statutes, the debtor may offer his creditor any of the following moneys which Congress has, from time to time, declared to be legal tender:

1. Gold coins in any amount.

2. Silver dollars in any amount.

3. Fractional silver coins in amounts not exceeding $10.

4. Minor coins (coppers and nickels) in amounts not exceeding twenty-five cents.

5. Treasury notes in any amount for all debts, public and private, and are also receivable for customs, taxes and all public dues.

272. Gold and Silver Certificates.—In 1878 Congress provided for the issuance of gold and silver certificates, which may be obtained in exchange for gold and silver coin deposited with the Secretary of the Treasury. It is quite generally supposed that the certificates are a legal tender. In fact, it is so stated in

*Without Recourse.—An endorsement "without recourse" releases the endorser from liability.

some few text-books on commercial law, but such suppositions and statements are erroneous. The statute provides that they are legal tender for customs, taxes and all public dues, but not for private debts. Like national bank bills, they circulate as freely as if they were legal tender, and from a practical view they are such, because the gold and silver which they represent may be obtained on presentation of the certificates to the treasury or any sub-treasury.

273. National Bank Bills. – Bank bills are a good tender, if they are not objected to by the creditor. But they are in no sense a legal tender. Most persons are, however, very willing to accept them. A, being indebted to B in the sum of $100, offers him the amount in national bank bills. B may decline to accept them, and demand payment in gold, silver or treasury notes.

CASES.

(Give reasons for answers.)

51. A contracted with B to build a stone wall according to certain drawings and specifications. The price was stipulated to be "the sum of four dollars and fifty cents per perch complete." In an action brought to recover for said work evidence was offered that there existed a custom among stonemasons and builders known as "masons' measure," whereby stonemasons are entitled to recover not only the actual solid contents of a wall or structure built, but also for openings, such as windows, etc., in the same manner as if the same were solid masonry. Should B be entitled to recover for his work according to "masons' measure?"[253]

52. A bought goods of B and gave in payment a check. Is A discharged from further liability?[263, 264]

53. A covenanted to dig from certain premises not less than 1000 tons of potter's clay annually. It was found that there was not so much as 1000 tons of clay under the land. Is he liable for breach of contract?[260]

54. A gave his note to B in settlement of a debt. Is the debt discharged?[263]

55. A bought goods of B amounting to $450, and gave in payment C's note for $450, endorsed, "without recourse." B was unable to collect on the note; hence he sued A for the value of the goods delivered. Can he recover?[265]

56. A, owing B $1, tendered in payment one fifty-cent piece and the balance in five and one cent pieces, which B refused to accept. What are B's rights?[271]

CHAPTER XI.

CONTRACTS FOR PERSONAL SERVICE.

274. Recompense.—When a servant leaves his employment without excuse, before the end of his term of service, he can recover nothing for what he has done.[275] If the completion of the services was prevented by the servant's illness or death,

he or his administrator is entitled to recover for part performance. If A engages B to work for him for one year at a stipulated price, B must perform the entire year's work before he can collect anything of A. If A should engage B to work a year at a specified price per month, and to be paid monthly, B could sue and recover his salary at the end of each month. But if B quits A's employment without just cause before the end of the year, A could keep out of B's wages such damages as were the result of the breach of contract.

276. Servant Discharged.—If the servant be rightfully discharged, he may recover his proportionate wages to date. A employed B for one year. At the expiration of six months B was rightfully discharged. A must pay B six months' salary. [277]If the servant be wrongfully discharged, he has a right to recover from his employer the whole amount of salary for the specified period, less such sum as it is shown he did earn, or could, by the exercise of due diligence, have earned in some other employment of the same general kind since his dismissal. [278]When the contract is made in the first instance for a year, or other definite period, and the service continues afterwards, the presumption is that the same contract prevails for the next year or other period.

CASES.

(Give reasons for answers.)

57. A employed B as a clerk for one year at a salary of $1200, payable at the end of the year. B died after serving six months. Can his administrator recover proportionate compensation?[275]

58. A was employed as a teacher for six months, and was wrongfully discharged after two months' service, at which time one month's salary was due, which A sued for and recovered. Has A exhausted his rights? If not, what remedy has he?[277]

59. A engaged B for one year at $1200. At the expiration of that period there was no new contract, but the employment continued as under the original contract for seven months, when, after receiving seven months' salary, B was wrongfully discharged. Has B a cause of action for damages against A for breach of contract?[278]

60. A contracted with B for the latter's services for five years at $2000 a year. It was agreed that if B got drunk and neglected his work A might discharge him. After B had been in A's employment about two years he became intoxicated and neglected his work, and was consequently discharged. Can he recover his salary up to the time he was discharged?[276]

CHAPTER XII.

TO PREVENT THE VIOLATION OF CONTRACTS.

279. **Specific Performance of Contract.**—A court of equity has jurisdiction* to enforce a promise to do a thing by issuing a decree for *specific performance*,* and to enforce a promise not to do a particular act by injunction.* [280]These remedies may be had only when the common law remedy of an action for damages for breach of contract would be inadequate to the loss sustained [281]Contracts. for the sale of land may be specifically enforced, because money that might be recovered in actions for damages for breach of such a contract is not considered in law as a sufficient compensation to the injured party.

282. **Contracts for Sale of Personal Property.**—If the contract is for the sale of goods and chattels* which may be readily obtained from other dealers, the contract will not be enforced, because the legal remedy for damages is adequate, enabling the party recovering damages to buy the same goods or chattels from others with the money recovered; but if the contract is for the sale of an article which no one can supply but the vendor,* the vendee* may obtain a decree for specific performance, because of the inadequacy of the legal remedy for damages. A clearer idea may be had by the citation of two leading cases on the subject. A agreed to supply B with coal-tar, which he could not obtain if A refused to fulfill his contract except from distant cities and at great expense. A decree was obtained prohibiting A from selling tar to anyone else. So where the owner of a patent right agreed to furnish a chattel covered by the patent which he alone could supply specific performance was decreed.

*Jurisdiction.—The power or right of exercising authority.

*Specific Performance.—The actual performance of a contract by the party bound to fulfill it. The old adage, "Perform your contract or pay damages," applies only when money is a sufficient compensation to the injured party, and when it is not a sufficient compensation the party grieved may compel the other to actually do or perform what he promised.

*Injunction.—A writ granted by a court of equity whereby a party is required to do or refrain from doing certain acts.

*Chattel.—Property which is movable or which can be taken with the person.

*Vendor.—One who sells.

*Vendee.—The one to whom something is sold.

283. Contracts for Personal Services.—Where a contract stipulates for special, unique or extraordinary personal services or acts, as, for example, by an eminent actor, singer or artist and the like, a court of equity will not pass a decree compelling specific performance, but it will restrain the violation of such contracts by injunction, which practically amounts to specific performance. [284]An injunction restraining the breach of a contract is a negative specific enforcement of that contract. A agreed to sing at B's theater, and to sing nowhere else. The Court refused to decree specific performance of the promise to sing at B's theater, but enjoined A from singing elsewhere. This decree amounts to a negative specific performance of the contract. In another case it was held that if the services which acrobats have agreed to render at plaintiff's theater are unique or unusual in character they will be enjoined from violating their contract by performing at a rival theater; otherwise not. [285]The above rules concerning the specific performance of contracts must be taken with some degree of caution, for in the United States it is still a controverted question, yet the weight of authority seems to incline in the direction indicated in the text.

CASES.

(Give reasons for answers.)

61. A sold B 100 pounds of flour. Subsequently A refused to fulfill his contract. What are B's rights?[282]

62. A sold B an article which was covered by A's patent. A refused to deliver the article, and B sued to compel specific performance. A was the only person from whom such an article could be obtained. Can he succeed?[282]

63. A teacher was engaged by the president of a college for one year. The teacher refused to enter upon his service. Thereupon the president brought an action to require him to perform his contract. Can he succeed?[283, 284]

64. A brought an action against B to compel the latter to convey certain real estate which had been contracted for in writing. Can he succeed?[281]

CHAPTER XIII.

RULES RELATING TO TIME AND DAMAGES.

286. Time.—Time may be made the essence of a contract by expressed stipulations of the parties, or from the nature of the contract. [287]In mercantile contracts stipulations as to the time when an act shall be performed are generally of the essence of a contract. Under a contract for the manufacture of goods and

their delivery on a specified day, and there being a failure to deliver the goods on the day named, the buyer is not bound to accept them. [288]Time is not generally of the essence of a contract to convey land, but it may be made so by agreement. [289]If one party prevents performance by the other within the stipulated time the latter will be allowed to perform subsequently. For instance, if one party to a contract directs alterations to be made, an extension of time, as is necessitated by the change, will be implied.

290. **Damages.**—In order to secure the performance of a contract within a certain time it is often agreed that in the event of a default by one of the parties the party in default shall pay to the other a certain sum of money, or forfeit a certain amount to be paid on the contract. [291]If the sum to be paid be a penalty for violating the contract it will not be enforced, but if it be damages it will be enforced.

[292]The rules governing penalties and liquidated damages are explained by the following illustrations. When a greater sum of money is to be paid, upon the failing to pay a smaller sum, it is a penalty, and enforceable. [293]The legal rate of interest on the money is the measure of the damages. [294]When a building contract, or one for similar work, provides that if the work is not completed by a certain time the builder shall pay a certain sum for each day's delay, it is generally treated as liquidated damages, and not a penalty. But if the amount to be forfeited be excessive it will then be considered as a penalty. Thus when a contract for building a house, the rental value of which was $22 per week, provides that $140 per week shall be paid for delay in the completion of the work, such a sum is regarded as a penalty, and therefore not enforceable. [295]It must be shown, in all cases, that the plaintiff has actually sustained a loss, otherwise he will not be entitled to recover damages.

296. **Measure of Damages.**—In a suit to recover damages for the breach of a contract to sell personal property the measure of damages is the difference between the market price at the time of delivery and the contract price. [297]Speculative damages are not recoverable. Where a mill was not completed within the time specified in the contract the damages are to be estimated by what is a fair rent of the mill during the time the owner was kept out of its use. He cannot be allowed estimated profits arising from the working of the mill. When a contract of sale has been broken by the seller, the profits which the buyer would have made from subsidiary contracts with third persons cannot, as a general rule, be recovered.

QUESTIONS FOR REVIEW.

1. Define Law. 2. What is Common Law? 3. Define Statutory Law. 4. What is a contract? 5. What are the elements of a contract? 6. How may an offer and acceptance

be made? 7. May the offerer so word the proposition as to require the offeree to do some act or his silence will be construed to be an acceptance of the offer? 8. When may an offer be revoked? 9. When is an acceptance by mail complete, and why? 10. What are the valid contracts of infants? 11. To what extent is an adult bound on a contract made with an infant? 12. How may an infant avoid an executed contract? 13. Define consideration. 14. What is a good consideration? 15. When is it sufficient to uphold a contract? 16. What is meant by a valuable consideration? 17. Must the exchange of values be equal? 18. When are gratuitous subscriptions enforceable? 19. What is a past consideration? 20. Is a past consideration ever sufficient to uphold a promise? 21. What are gaming and wagering contracts? 22. How do they differ? 23. What contracts are void because "against public policy?" 24. To what extent may a contract restrain trade? 25. What are the essential characteristics to constitute fraud? 26. What remedies has a defrauded party? 27. What is the result when both parties have been guilty of fraud? 28. What are the three classes of contracts? 29. What is a specialty contract? 30. What are the five important distinctions between Specialty and Simple contracts? 31. What is meant by Statute of Frauds? 32. What classes of contracts does it require to be written? 33. What constitutes a sufficient writing? 34. May the testimony of witnesses be substituted for the written memorandum? 35. What is meant by goods, wares and merchandise? 36. When a contract has been reduced to writing, may oral testimony be offered to change or vary the terms of the contract? 37. What constitutes a valid usage? 38. Does a usage become a part of every contract? 39. What are the ways of discharging a contract? 40. What are the forms of money used in the United States? 41. To what extent is each kind of money a legal tender? 42. When will the giving of a note be considered payment of a debt? 43. May a servant recover for part performance of his contract? 44. May a servant recover for part performance of his contract when he was rightfully discharged? 45. What is meant by "specific performance" of a contract? 46. When may specific performance be had? 47. What is a negative specific enforcement of a contract? 48. What is meant by "restraint of trade," and why is such a thing an unlawful object of contract? 49. As contracts restraining trade are usually for more than one year, must they be written in order to enforce them? 50. What is a void contract? 51. Define a voidable contract.

CHAPTER XIV.

BILLS AND NOTES.

298. Negotiable Instruments Law. In 1895 the Commissioners on Uniformity of Laws, appointed by the American Bar Association, had prepared by a sub-committee a codification of the law relating to Bills and Notes. When completed the draft of the law was submitted to many prominent lawyers and professors and to several English lawyers and judges, with an invitation for suggestions and criticisms. [299]In 1896, at a conference of the Commissioners on Uniformity of Laws, the draft as submitted was adopted. It is known as the Negotiable Instruments Law. [300]It has been submitted to the legislatures of

many of the States, having been adopted by New York, Connecticut, Colorado, Florida, Maryland, Massachusetts, Virginia, North Carolina, District of Columbia, North Dakota, Oregon and Washington. It will probably be but a few years until all the States will have passed the "Negotiable Instruments Law;" we therefore base the law of Bills and Notes on this act. [301]The act, however, does not in any way revolutionize the old law on the subject. Not many changes were made in the pre-existing law, but such as were made will be noticed as we proceed. The law which is applicable to Bills of Exchange is, for the most part, equally applicable to Promissory Notes. We shall, therefore, treat of them collectively. Whenever the law does not equally apply it will be so stated.

302. **Negotiable and Non-Negotiable Paper.**—Commercial paper is simply a form of contract—that for the payment of money only. [303]These written contracts are called drafts, bills, notes, checks, certificates of deposit, etc., and are negotiable* or non-negotiable. The usual acceptance of the term "non-negotiable" is that such paper cannot be bought or sold. [304]At common law that was true, but by statute all non-negotiable bills and notes may be transferred by assignment,* the assignee (the person to whom it is transferred) receiving the same rights to collect as the assignor (the person who makes the assignment). The student, then, must bear in mind that if for some reason the note, draft, check, etc., is not negotiable it does not mean that it is not subject to sale. Negotiable paper simply possesses certain highly valuable qualities which non-negotiable paper does not. One who takes it in the regular course of business is largely protected. What these qualities and protections are cannot be stated in an abstract rule. We shall consider them under the following heads: 1. Assignment; 2. Value of Assignment; 3. Title; 4. Consideration.

305. **Assignment.**—Negotiable paper is always assignable by either endorsement and delivery or by delivery. Non-negotiable paper was not assignable at common law. [306]By statute it and all other "choses in action"* for the payment of money are made assignable, so as to enable the assignee* to recover in his own name. [307]Such assignment must be in writing, signed by the assignor,* either on the instrument itself or separate paper. No particular form of words is required. It has been held that a blank endorsement is sufficient to constitute the party to whom it is delivered the absolute owner, with power to fill up the

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*Negotiable.—Capable of being sold or transferred.

*Assignment.—The writing by which title or interest in the paper is transferred.

*Chose.—A thing; personal property. A *chose in action* is a thing of which one has not possession or actual enjoyment, but only a right to it, as a right to recover money due on a contract.

*Assignee.—A person to whom an assignment is made.

*Assignor.—A person who assigns or transfers his interest.

assignment. The following, written on the back of the note which is non-negotiable is sufficient to give the assignee all the rights of the assignor; "For value received I hereby assign to W. O. Coy the within note. J. N. Mann."

308. **Value of Assignment.**—In transferring non-negotiable paper the assignee takes it subject to all the equities* and defenses* that exist between the original parties up to the time of assignment and before notice thereof was given to the party primarily liable. [309]Negotiable paper is not subject to these defenses, but carries with it the right of the holder to recover the whole amount which appears on its face when passed maturity, without notice, and in the usual course of business, the meaning of which will be explained later on. An illustration will make clearer the difference: A makes a note for $1000, payable in six months to the order of B. B endorses it to C. While B held the note A made a payment on it of $500. The payment was not endorsed on the note. At maturity C can recover from A the whole amount, $1000. But suppose the note was non-negotiable, that is, it did not contain the words, "order or bearer," or for some other reasons its negotiability was destroyed. Then C could not recover the whole amount. He can recover no more than B. He takes B's rights only, for, applying the rule, C takes it subject to all equities that existed between A and B.

310. **Title.**—By common law a party cannot pass title to any personal property that he does not own, but title to negotiable paper may be passed by one who has no title, provided the assignment is made before maturity, without notice, and in the usual course of business. A steals a note from B's safe. A can pass title to the note, although he has none himself. If, however, A steals a watch or other personal property, he cannot pass title. The watch or other property may be recovered from the buyer, but a negotiable note cannot be so recovered from a *bona fide* holder for value.

311. **Consideration.**—In negotiable paper the consideration is presumed. [312]As between the immediate parties, the presumption may be rebutted, but in favor of a *bona fide* holder the presumption is conclusive. Brown gives his note to Smith for a past consideration. Smith cannot recover on the note, because a past consideration is insufficient to support a contract as between immediate parties. But if Smith transfers the note to Jones, he being a *bona fide* holder for value, may recover. Brown and Smith are *immediate parties*, and Brown and Jones are known as *remote parties*, and as between remote parties the maker cannot question the want of a sufficient consideration.

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*Equity.—Natural or equal justice between contending parties; the giving or desire to give to each man his due according to reason.

*Defense.—That which protects; a denial of the truth or validity of the plaintiff's claim.

ANALYSIS OF DRAFTS AND NOTES.

DRAFTS AND NOTES.

1. Negotiable distinguished from non-negotiable
   - 1. Assignment.
   - 2. Value of assignment
   - 3. Title.
   - 4. Consideration.
2. Definition
   - 1. Of bill of exchange.
   - 2. Of promissory note.
3. Parties
   - 1. Of draft
     - 1. Drawer.
     - 2. Drawee.
     - 3. Payee.
   - 2. Of note
     - 1. Maker.
     - 2. Payee.
   - 3. Immediate.
   - 4. Remote.
   - 5. Holder.
4. Requisites of negotiability
   - 1. Must be payable absolutely.
   - 2. The bill must contain certain direction and the note a certain promise to pay.
   - 3. Negotiable words.
   - 4. Certainty as to amount.
   - 5. For payment of money only.
   - 6. Must be unsealed.
   - 7. Must be delivered.
5. Effect of additional stipulations
   - 1. Appointing holder to confess judgment
   - 2. Waiving exemptions, etc.
   - 3. Payment of collection and attorney's fees
6. Form of
   - 1. Date of making.
   - 2. Time of payment
     - 1. At sight.
     - 2. At thirty days' sight.
     - 3. At thirty days after sight.
     - 4. On demand.
   - 3. Payee.
   - 4. Amount.
   - 5. Consideration.
   - 6. Signature.
   - 7. Drawee.
7. Maturity
   - 1. Days of grace.
   - 2. Sunday and legal holidays.
8. Acceptance
   - 1. Written.
   - 2. Verbal.
   - 3. Written promise to accept.
   - 4. Who may accept.
   - 5. When it may be made.
   - 6. General.
   - 7. Qualified
     - 1. As to amount
     - 2. As to time.
     - 3. As to number of acceptors.
     - 4. Imposing a condition.
     - 5. Effect of.

CHAPTER XV.

PARTIES TO COMMERCIAL PAPER.

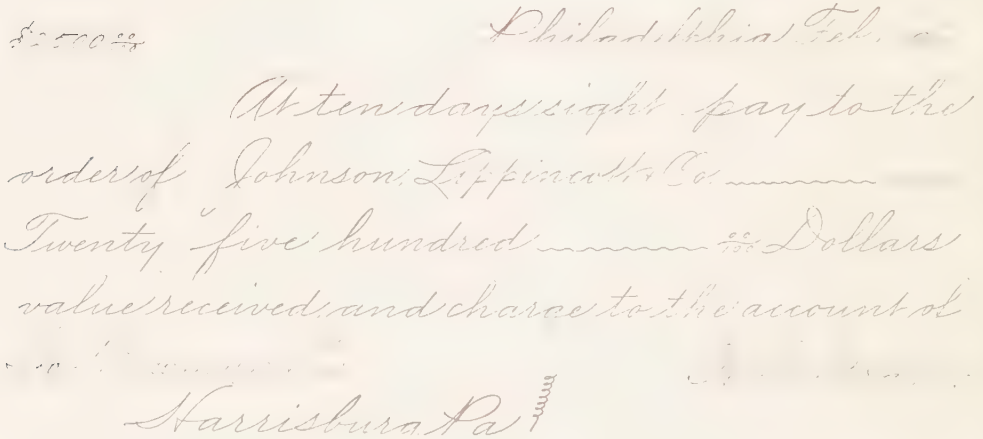
313. Definition.—A Bill of Exchange (commonly called "draft," and hereafter to be known as such) is an unconditional order in writing for the payment of a sum of money, absolute and at all events.

[314]A note is an unconditional written promise signed by the maker for the payment of a sum of money absolutely and at all events, either to the bearer or to a person therein designated, or his order. The most important distinction between a note and a draft is, that in the former there is a promise by one party to another to pay, and, in the latter, there is a request by one party of another to pay the amount stated in the paper.

315. Parties.—There must, in point of form, be three parties to a draft and check, and two to a note. We submit a form of each to illustrate.

DRAFT.

316. Form.



The parties to a draft are:

1. *Drawer.*—The party who gives the order.
2. *Drawee.*—The party on whom the order is given.
3. *Payee.*—The party in whose favor the order is given.

In the form No. 316 the drawer is H. G. Grant, the drawee is Bowman & Co., and the payee is Johnson, Lippincott & Co.; that is, H. G. Grant requests Bowman & Co. to pay the amount named to Johnson, Lippincott & Co.

After the drawee has accepted a draft he is no longer called the drawee, but *acceptor*.

CHECK.

317. Form.

No 5 Cincinnati O. Apl 30 19—

Merchants National Bank

Pay to the order of Davis & Comer — $283⁵⁰

Two Hundred Eighty-three ⁵⁰/₁₀₀ Dollars

X. W. Zaner.

A *check* has the same parties as a draft, i. e., drawer, drawee and payee. The drawer of a check is often spoken of as a maker, which is not correct. Maker applies only to the signers of Promissory Notes. In the above form the drawer is X. W. Zaner, the drawee is the Merchants' National Bank, and the payee is Davis & Comer.

NOTE.

318. Form.

$1797.⁵⁰ Harrisburg, Pa. May 26, 19—

Three months after date, I promise to pay

to the order of John Wanamaker

Eighteen Hundred, Ninety-seven ⁵⁰/₁₀₀ Dollars

No. 5. Due Aug 26. H. H. Etter

The parties to a note are:

1. *Maker.*—The party who makes the promise.

2. *Payee.*—The person in whose favor the promise is made.

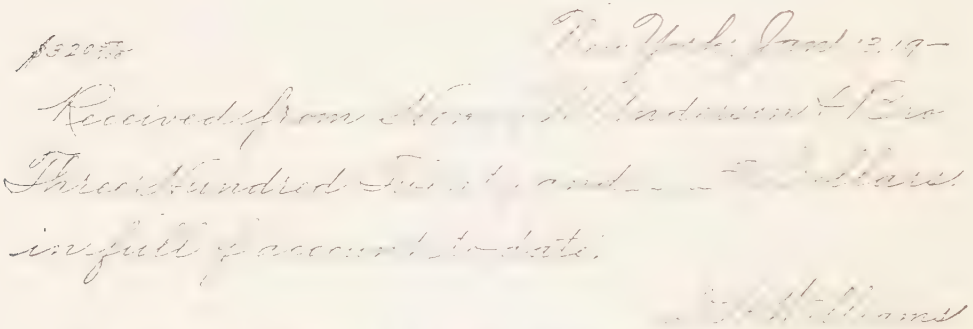
In the form No. 318 the maker is H. H. Etter, and the payee is John Wanamaker. The contract and liabilities of the different parties in a draft, check and note are fully discussed in a succeeding chapter.

319. Immediate Parties.—Those parties between whom there is *privity of contract*, i. e., drawer and acceptor, drawer and payee, maker and payee and endorser and immediate endorsee. Privity of contract means a connection or bond of union between parties as to some particular transaction.

320. Remote Parties.—Those parties between whom there is no privity of contract, i. e., maker and endorsee, payee and acceptor. It is important that these two classes be remembered, because between the immediate parties the rights of a *bona fide* holder never apply, whereas in case of remote parties the rights of a *bona fide* holder do apply.

321. Holder.—"Holder" means the person who is in actual or constructive possession of the paper and entitled at law to enforce payment thereof by the maker, acceptor or endorser. [322]An endorser of non-negotiable paper is not liable for payment, because his liability attaches to negotiable paper only. Holder includes payee, endorsee or bearer.

323. Form. RECEIPT.



324. Receipt.—A receipt is a written acknowledgment of the payment of money or delivery of chattels. It is executed by the person to whom the delivery or payment is made. The receipt must be delivered to the debtor for a memorandum or payment made by the creditor in his own books is no receipt.

325. Effect of.—The mere acknowledgment of payment made is not treated in law as binding or conclusive. So far as a simple acknowledgment of payment or delivery is concerned it is *prima facie** evidence only, and is, in general open to explanation. This is an exception to the general rule that parol evidence cannot be admitted to contradict or vary a written instrument. Thus, a party may always show in explanation of a receipt that it was obtained by fraud, or given under a mistake, or that, in point of fact, no money was actually paid as stated in it.

*Prima Facie.—At first view or appearance.

Prima facie evidence is such evidence which is sufficient to establish the fact unless rebutted.

CHAPTER XVI.

REQUISITES OF NEGOTIABILITY.

326. **Essential Requisites.**—There are certain essential things which every negotiable instrument must contain, and the absence of any one of them will destroy its negotiable characteristics. [327]They are six in number, as follows:

1. Must be payable absolutely and without contingencies.

2. The bill must contain a certain direction, and the note a certain promise to pay.

3. Negotiable words.

4. Certainty as to amount.

5. For payment of money only.

6. Must be delivered.

[328]We shall consider these requisites in the following order. The student will have little or no difficulty in remembering them, as they are given in the order in which they arise in the usual form of drafts and notes.

329. **Must Be Payable Absolutely and Without Contingencies.**—An instrument made payable on the happening of an uncertain event or contingency is not negotiable, and the happening of the event does not cure the defect. [330]But if the contingency is one which is sure to happen, that is, the time made certain, though no one can tell when, it does not destroy its negotiability. "Pay C, or order, $100 ten days after the death of D," is negotiable, because the death of D is sure to take place, although the precise time is not known. "Pay C, or order when I marry D," is not negotiable, because it is not certain that the event will ever happen.

331. **Certainty as to Amount.**—The sum payable must be certain and definite, or capable of being made certain.

[332]The sum is certain, although it is to be paid:

1. With interest; or,

2. By stated instalments; or,

3. By stated instalments, with a provision that upon default in payment of any instalments or of interest the whole shall become due; or,

4. With exchange, whether at a fixed rate or at the current rate; or,

5. With costs of collection or an attorney's fee in case payment shall not be made at maturity. [333]As to clauses which contain a stipulation that the maker

shall pay costs and attorney's fees, there has been much conflict in the decisions. The rule adopted is the one sustained by the weight of authority. The courts which have sustained this rule have taken the view that so long as the amount payable is certain up to maturity and dishonor, it is not essential that after that time when it has become non-negotiable for other reasons the certainty as to the amount should continue.

The following are not negotiable, because they are at variance with the rule:

1. Pay C, or order, $100 and all other sums which may be due him.

2. Pay C, or order, the proceeds of shipment of goods, value $2000, consigned by me to you.

The following are negotiable:

1. A promise to pay $40 per acre for the X lot of land becomes valid when the number of acres is endorsed thereon.

2. A promise to pay $100, with interest, on or before January 1, 1899.

334. For Payment of Money Only.—The instrument must require the payment of money. This means gold, silver, treasury notes or national bank bills; the latter, although not legal tender, have been legalized as national currency. The following are not negotiable:

1. A promise to pay C, or order, $100 in cotton, or in work and labor.

2. A promise to pay in currency of a foreign country.

3. Pay C, or order, the accrued rent, though the rent is payable in money.

4. Pay C, or order, $100 in United States bonds.

[335]Notes or bills payable out of a particular fund are not negotiable bills or notes, because payment is contingent on the adequacy of the fund. The words "out of" are usually relied upon to show such a contingency.

The following are not negotiable:

1. Pay C, or order, $100 out of the money in your hands belonging to the D Co.

2. Pay C, or order, $100 out of the money arising from the sale of my land.

[336]An absolute order to pay, coupled with a direction to the drawee to reimburse himself out of a particular fund, or show to what account it is charged, is negotiable, because the fund is not the source of payment.

The following are negotiable:

1. Pay C, or order, $100, and take the same out of our share of the grain when sold.

2. Pay C, or order, $100 on account of money advanced by me for the Roe Company.

337. The Bill Must Contain a Certain Direction and the Note a Certain Promise to Pay.—A bill is not asking a favor. [338]The direction to the drawee must be imperative. "Please let bearer have $100, and you will much oblige

me," was held to be invalid. A promissory note may be in any form of words from which a promise may be implied. There must, however, be something more than mere acknowledgment of indebtedness.

The following are not notes, but mere evidence of indebtedness:

1. Due C $100, value received.
2. I. O. U. $100.
3. I owe you $100, to be paid September 1, 1895.
4. Due C, or order, on demand, $100.

339. **Negotiable Words.**—These words are "order" or "bearer." [340]They are not essentially requisite to validity of bill or note, but are necessary to make them negotiable. [341]If the bill or note be payable to *A, or order,* it is payable to him or to the person to whom he orders it to be paid. He may transfer his rights, and even better rights than he possessed, to a third party by endorsement and delivery: [342]If made payable to *A, or bearer,* he may transfer the right and title to the paper by mere delivery in the same manner as he would transfer the right or title to a book or other personal property the possession of which is *prima facie* evidence of ownership. [343]There is a difference in the expression "Pay to the order of A" and "Pay to bearer, A." The former is the same as if it read, "A, or order," while the latter is not equivalent to "A, or bearer;" hence, if the word bearer precedes the payee's name the paper is not negotiable.

344. **Must Be Delivered.**—Delivery is essential to the validity of bills and notes. There must be a transfer of the possession of the instrument. B, who is indebted to C, makes a note for the amount, payable to C. B dies, and the note is afterwards found among his papers. C has no right to this note, and if given to him, cannot enforce payment.

345. **Escrow.**—Commercial paper may be given as escrow; by this we mean that the paper may be delivered to a third person to hold until the payee does some act or performs some condition, and which is not to take effect until the condition is performed, and its negotiation contrary to the condition may be restrained by injunction. [346]As between immediate parties, if the condition has not been fulfilled no recovery can be had. If put in the hands of an agent to be delivered on condition, it may be recalled any time before delivery. C, the holder of a note, endorses it to D; C transmits it by post to his own agent. The agent informs D that he has received the note endorsed especially to him (D), but does not deliver it to him. C can revoke the transaction and cancel his endorsement to D.

[347]When negotiable instruments have been delivered conditionally or as escrow they differ from choses in action or non-negotiable paper in this, that if delivered contrary to instructions to a *bona fide* holder all parties are bound to such holder. C, the holder of a bill, endorses it especially to D in order that he may get it discounted for him. D, in a breach of trust, negotiates the bill to E.

If E takes the bill *bona fide* he acquires a good title, and can sue all the parties thereto. If he does not so take it, he cannot sue C; and if he sues the acceptor the latter may set up as a defense that the bill is C's. Delivery is presumed from possession of the paper by payee or holder, and that delivery was made at time of date of instrument. Such presumption may, however, be rebutted.

CHAPTER XVII.

ADDITIONAL STIPULATIONS.

348. **Additional Stipulations Not Affecting Negotiability.**—Having treated of the essential requisites of negotiable paper, there yet remains to be considered a practice which has become quite common in the United States within the last quarter of a century of embodying in notes provisions which:

1. Authorizes the sale of collateral securities in case the instrument be not paid at maturity; or,

2. Authorizes a confession of judgment if the instrument be not paid at maturity; or,

3. Waives the benefit of any law intended for the advantage or protection of the obligor (one obligated); or,

4. Gives the holder an election to require something to be done in lieu of payment of money.

[349]The "Negotiable Instruments Law" provides that an instrument otherwise negotiable, containing any of the above provisions, is to be regarded as negotiable.

[350]Before the adoption of this act it was usually held by the courts that these additional stipulations destroyed the negotiability of the paper, because they have a tendency to encumber the paper, which, in order that it may circulate with freedom among business men and supply the want for which it was created, should be free from conditions and contingencies and contain only the bare promise for the payment of a certain sum of money absolutely and at all events. In former years the practice of inserting these provisions was very limited, but in recent years it has become a common custom, and it is to meet this practice that the former rulings of the Courts were changed.

[351]We herewith submit a number of forms to illustrate how such notes are usually drawn. They may be worded in many different ways.

NOTE WAIVING EXEMPTIONS.

"$2500 $^{00}/_{100}$" Richmond, Va. Sept. 1, 19—

Ninety days after date I promise to pay to the order of James T. Hammond Two Thousand Five Hundred $^{00}/_{100}$ Dollars. at First National Bank, without offset, value received. I hereby waive the benefit of the Homestead Exemption as to this debt.

William R. Hall.

352. **Waiving Exemptions.**—The security which the law gives to every creditor is that if the debtor does not pay his creditor the latter may, by obtaining a judgment, have the property of the debtor sold and the proceeds of sale applied on the debt. [353]But in all the States the legislatures thereof have made provisions whereby a certain amount of property of the debtor is exempt from attachment and cannot be sold to pay his debts. The value of property exempt varies in the different States from $100 to $2500. [354]While the law gives to every debtor this protection, yet he may waive or give up this right and allow his creditor to take every dollar's worth of his property. The above form illustrates the wording of a note whereby the maker or debtor gives up the right which the law gives him of keeping a part of his property.

355. **Judgment Note.**—A note wherein the maker gives the holder a power of attorney, authorizing him to appear in court and obtain a judgment against the maker for the amount, is called a judgment note. This is a very severe form of contract, and should, if possible, be avoided under all circumstances. The following form is one quite generally used in Pennsylvania. It illustrates not only a judgment note, but also homestead exemption and payment of collection fees. Judgment notes are not permitted in the State of New York.

NOTE APPOINTING HOLDER TO CONFESS JUDGMENT, WAIVING EXEMPTIONS AND PAYMENT OF COLLECTION FEES.

$1000. *Philadelphia, Sept. 1, 19*

Three months after date I promise to pay to the order of Fairman A. Sadler & Co. One Thousand ~~~~~~~~~~~~~~~~~~~~ Dollars,

WITHOUT DEFALCATION, *with interest; and further do hereby authorize and empower any attorney of any Court of Record in Pennsylvania, or elsewhere, to appear for and confess judgment for the above sum, with or without declaration, with costs of suit, release of errors, without stay of execution, and with five per cent added for collection fees, and also waive the right of inquisition on my real estate that may be levied upon to collect this note, and do hereby voluntarily condemn the same and authorize the Prothonotary to enter upon the Fi. Fa. said voluntary condemnation; and further agree that said estate may be sold on a Fi. Fa., and hereby waive and release all relief from any and all appraisement, stay, or exemption laws of any State, now in force, or hereafter to be passed; and also waive the benefit of the present and any future bankrupt law that may be passed by the United States.*

Samuel P. Blair.

356. **Collateral Notes.**—Collateral means security given in addition to a principal promise; therefore a collateral note is one which contains a security for the payment of money in addition to the principal security. The principal security is the bare promise of the maker to pay the sum named; the collateral security is any stocks, bonds, warehouse receipts or other tangible property given to the holder of the note. [357]The maker of the note gives the holder the power to sell the collateral in case the note is not paid at maturity. [358]The stocks, bonds or other securities given with the note are not the property of the party who loaned the money, and must not, under any circumstances, be used by him except in default of payment. They are only pledged to make the loan secure, and when the money is repaid they must be returned to the borrower. The nominal value of the collateral usually exceeds the amount of the loan, because at a forced sale the collateral might not bring a sum equal to the amount loaned.

[359]As this method has become a very common practice of obtaining loans, we will more fully illustrate by supposing Mr. Brown wanted to obtain a loan from the American National Bank for $10,000. Not wishing to ask anyone to endorse his paper, as he would then feel under obligation to return the favor, he offers the bank 250 shares of stock of $100 each in the Consolidated Gas Co., Kansas City, which they can hold as security. The bank, being thus protected, makes the loan upon these terms. Mr. Brown will deliver to the bank with his note the stock endorsed in blank. If the note be paid at maturity the stock will be returned to Mr. Brown. If not paid, the stock will be sold and the proceeds of the sale will be applied in settlement of the note. If the proceeds from the sale of the stock be in excess of the loan, such excess will be returned to Mr. Brown. But if the proceeds be not sufficient to settle the loan the borrower will be liable for the deficiency. We herewith submit two forms of a collateral note:

COLLATERAL NOTE.

$7000. *Philadelphia, Pa., Sept. 1, 19 .*

Sixty days after date I promise to pay to the order of Second National Bank of Philadelphia, Pa., Seven Thousand~~~~~~~~~~~~~~~~~~~~Dollars,

VALUE RECEIVED, *without Defalcation, and I further deliver to the said payee One Hundred and Twenty-five Shares ($100 par) Capital Stock of Pullman Car Co., Chicago, Ill.,*

as collateral security for the payment of the said note on the day it becomes due, which collateral I hereby authorize and empower the holder of the promissory note (provided the same be not paid at maturity) to sell or transfer at public or private sale without further reference or notice; to apply the proceeds in payment thereof together with interest and charges thereon; thereafter should any deficiency remain, I further promise and agree to pay the same to the holder thereof on demand.

Charles Lee Mann.

COLLATERAL NOTE.

$ 25,000.00 CHICAGO, ILL., *Sept.* 6, 19

Four months after date *I* promise to pay to the order of

Union Trust Company, *at their office in Chicago,*

Twenty-five thousand DOLLARS,

for value Received, with interest at the rate of 6 per cent per annum, after maturity until paid.

Ira Willis

I have transferred and delivered to said **Union Trust Company,** *as Collateral Security, for the payment of this and of any other liabilities of the undersigned to said payee, due or to become due, or that may hereafter be contracted, the following property, value of which is Twenty-seven thousand five hundred Dollars, viz: Three hundred seventy-five shares, Chicago, Milwaukee & St. Paul Railroad Stock. Certificates: No. 3114 for 100 shares, No. 3115 for 200 shares and No. 3476 for 175 shares*

And the undersigned hereby give the said payee and assigns authority to sell the said property, or any part thereof, or any substitutes therefor, and all additions thereto, on the maturity of the above note, or any time thereafter, or before, in the event of the said security depreciating in value, at any public or private sale, without advertising the same, or demanding payment or giving notice, with the right to said payee and assigns themselves to be the purchasers, when sale is made at any brokers' board or public sale. And after deducting all costs and expenses, to apply the residue to the payment of any, either or all liabilities as aforesaid, as said payee or assigns shall elect returning the overplus to the undersigned; and in case the proceeds of the sale of said property shall not cover the principal, interest and expenses, the undersigned engages to pay the deficiency forthwith after such sale, with legal interest.

Ira Willis

CHAPTER XVIII.

FORM OF DRAFT AND NOTE.

360. Formality Not Required.—No particular form of words is essential to constitute a bill or note. All that is necessary is that such instruments contain the essential requisites as previously explained.

[361]We give a detailed analysis of the following forms which are in general use, in order that the student may see the composition or make-up of a draft and note from the beginning of the date to the completion of the same by the signing of the signature:

FORM 1.—FOREIGN BILL OF EXCHANGE.*—(Drawn at Sight.)

$9250 Philadelphia, Oct. 27, 19—

At sight pay [illegible] or order,
One Hundred Twenty-five and [illegible] Dollars
value received and charge to account of

[illegible] Clement
[illegible] Fourth St.

D. W. Howard & Co.

FORM 2.—INLAND BILL OF EXCHANGE.—(Drawn at Thirty Days' Sight.)

$[illegible] Baltimore, Sept. 1, 19—

Thirty days after sight pay to the
order of Charles L. Wilson
[illegible]
[illegible]

To E. H. Rumrose,
10 No. Eutaw St. Baltimore

G. W. Footman

FORM 3.—DRAFT.—(Drawn at Thirty Days' After Date.)

$1000 00/100 Baltimore, Sept. 1, 19—

[illegible]
order of Charles L. Wilson
One Thousand [illegible] Dollars
value received and charge to the account of

To E. H. Rumrose
10 No. Eutaw St. Baltimore.

[illegible]

*Foreign Bills of Exchange are usually drawn in sets of two or three, each for the same sum of money, but so worded that when one is paid the others become void.

FORM 4.—PROMISSORY NOTE.

$1000.00 Baltimore, Sept. 1, 19—

On demand I promise to pay to

Charles L. Wilson or bearer,

One Thousand Dollars

value received.

E. H. Primrose

362. Date of Making.—It is usual that the draft or note be dated, but this is not one of the essential requisites of negotiability. If in the above forms the date "Baltimore, September 1, 19—" were omitted, the instrument would still be valid negotiable paper. The date on the face of paper is *prima facie* evidence only of the true date. By *prima facie* evidence is meant "such evidence as is sufficient to establish a fact unless rebutted." As between immediate parties the true date is the date of delivery, although the paper may bear a date which is either before or after date of delivery. As to remote parties, the date on the instrument governs.

[363]For illustration: A draws a draft on B payable to C three months after date. The draft was not dated. C may give evidence to show on what day the draft was given to him, and that day will then be the true date of the draft.

364. Time of Payment. 1. *At Sight.*—The expression "at sight" means that the draft is payable when presented to the drawee. In Form 1, the drawee, W. W. Aument, is instructed to pay the bill as soon as the payee, William J. Harman, presents it.

[365]2. *At Thirty Days' Sight.*—This means that the draft is not payable on presentation, but thirty days after presentation and acceptance. In Form 2, the payee, Chas. L. Wilson, cannot require the drawee, E. H. Primrose, to pay until thirty days after it has been presented and accepted.

[366]3. *At Thirty Days After Date.*—When a draft is thus drawn it need not be presented for acceptance, because the drawee is ordered to pay thirty days after the date of the draft, and not thirty days after acceptance; hence, when thirty days have expired it is payable, whether or not the drawee has previously seen the draft. While these drafts do not require acceptance in order to fix the date of maturity, yet it is customary to present them for acceptance, in order that the holder may ascertain whether or not the drawee will honor the draft. In Form 3, the drawee, E. H. Primrose, is directed to pay the draft October 1, 19—.

[367]4. *On Demand.*—When the time of payment is so expressed it means within a reasonable time, which depends entirely upon the circumstances in each case. It may mean one day, one month, three months or a year. In the note as indicated by Form 4, E. H. Primrose's promise to pay on demand may mean that he will pay the note in one hour, one day or one month, according to the intention of the parties and the circumstances attending the giving of the note. No definite rule can be laid down as to the exact day on which such notes fall due.

368. **Payee.**—This is the party who is to receive the money, or the person in whose favor the instrument is made. He should be pointed out with certainty. In Forms 2, 3 and 4, Chas. L. Wilson is the payee. The payee of a bill or note not payable to "bearer" must be an existing person capable of being ascertained and identified at the time it is issued. It is not necessary to name payee. It is sufficient if he be indicated by description only, and when so designated or misnamed parol evidence is admissible to identify him. "Pay to the cashier of Drovers and Mechanics' National Bank." Evidence is admissible to show that A was cashier of the bank when the draft was issued.

369. **Amount.**—The amount must be written in the body of the paper, and if expressed in figures it is valid. A defect where the intention is manifest does not vitiate* the paper, i. e., "One Thousand $^{00}/_{100}$," has been held to mean dollars. The marginal figures, as indicated by "$1000," is no part of the instrument, but a mere memorandum which may aid in the correct construction of a defective statement of the amount expressed in the body; i. e., "One Thousand" written in the body of the instrument, with no figures in the margin, would be invalid, because of no amount, but if "$1000" were in the margin it would cure the defect and make the paper valid.

[370]When the amount expressed in the body of the paper varies from that expressed by the marginal figures the former will hold as against the figures.

371. **Consideration.**—The expressions "value received" and "value received and charge to my account," although usual, are not necessary. They are pure surplusage.* Value received in a note means that the maker has received value from the payee. In a bill of exchange or draft payable to a third party "value received" means that the drawer has received value, but in an accepted draft, payable to the drawer's order, it means that value has been received by the acceptor. A note given by A to B is expressed to be given for "value received." In an action by B to recover from A the latter may produce evidence to show that he never received value, or that the consideration wholly failed, and thus

*Vitiate.—To render defective; to impair or destroy the validity of an instrument.

*Surplusage.—Matter in an instrument that is not necessary to its meaning, but does not affect its validity.

avoid payment. C, the drawer and payee of a draft expressed to be for "value received," sues the acceptor. The acceptor may show that the draft was drawn and accepted for C's accommodation, thereby avoiding payment.

372. **Signature.** "Signature means the writing of a person's name on the paper, in order to authenticate and give effect to some contract thereon." The name of the maker or drawer must be on the face of the note or draft, but may be in any part of the paper in ink, pencil, stamps, or by mark.

373. **Drawee.** The drawee of a draft must be designated with reasonable certainty. If the draft be directed to where a person lives it is good if accepted by that person. An instrument in the form of a draft addressed "to ———, Washington, D. C.," is not a draft, because the drawee is not designated, but an instrument in the form of a draft addressed "To No. 340 Pennsylvania avenue, Washington, D. C.," if accepted by B. E. Windom, whose office is there, becomes a draft, and B. E. Windom is liable as the acceptor thereof.

374. **Time of Maturity.**—The "Negotiable Instruments Law" provides that every negotiable instrument is payable at the time fixed therein, without grace. [375]When the day of maturity falls upon a Sunday or a holiday the instrument is payable the next succeeding business day. [376]Paper falling due on Saturday is to be presented for payment on the next succeeding business day, except that paper payable "on demand" may, at the option of the holder, be presented for payment before 12 o'clock noon on Saturday when the entire day is not a legal holiday.

377. **Time; How Computed.** When the instrument is payable at a fixed period after date, after sight or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and including the date of payment.

378. **Paper Payable at Bank.** When the paper is made payable at a bank it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon. There is some conflict in the decisions as to the authority of a bank to pay a note or acceptance made payable there. The above rule, adopted in the statute, is the one supported by the weight of authority, and is also the rule which is the most convenient in practice.

CHAPTER XIX.

MATURITY.

379. **Days of Grace.** These are three days allowed to the acceptor of a draft or maker of a note in which to make payment in addition to the time contracted for in the draft or note itself. They are allowed on all drafts and notes when not

expressly excluded, except those payable on demand, whether the paper is negotiable or not. The date of maturity is determined by excluding the day from which the time is to run and including the last day. When the time is expressed in days the actual number of days is counted. When expressed in months, calendar months are meant. To illustrate; A note dated January 31, payable in one month without grace, is due February 28; with grace, March 3. A similar note dated January 1 would be due February 1. If days of grace were allowed three more days would be added, making the maturity February 4. A note dated January 1, payable in thirty days, without grace, is due January 31. A note dated February 1, payable in thirty days, without grace, is due March 3.

[385]Days of grace have been abolished except on sight drafts payable in Maine, Massachusetts and New Hampshire, in the following States: California, Colorado, Connecticut, District of Columbia, Florida, Idaho, Illinois, Maine, Maryland, Massachusetts, Montana, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, Utah, Vermont, Wisconsin.

CASES.

(Give reasons for answers.)

1. "Thirty days after date I promise to pay B, or order, $50. A." What must B do to transfer his right and title in the note to a third party?[305]

2. "Ten days after date I promise to pay B $100. A." B assigns the note to C. Can C recover of A?[308]

3. Suppose, in the above case, A had made a payment to B of $50, which had not been endorsed on the note. Would that have any effect on C's right to recover?[308, 309]

4. B held A's promissory note made payable to bearer for $1000. While on his way to the bank B lost the note, which was found by C, who sold it to D, a *bona fide* purchaser. Can D recover of the maker, A?[310]

5. Suppose, in Case 4, the note was not negotiable; would that affect D's right to recover?[310]

6. A, in consideration of his friendship and esteem for B, gave the latter his promissory note payable in six months. The note was expressed to be given for 'value received." At maturity B sues A. Can he recover?[311, 312]

7. Suppose, in Case 6, B had sold the note to C, who was a *bona fide* purchaser. Could C recover of A?[312]

8. "I promise to pay B $100 ten days after date. A." Is this a negotiable note?[339]

9. "Thirty days after date I promise to pay B, or bearer, $100. A." B, without endorsement, and with no more formality than if it were a book, sold the note to C. Can C recover on the note in his own name?[342]

10. "Ninety days after date I promise to pay B, or order, $100 in goods from my store." Is this a negotiable note?[334]

11. "In one month after my return from Chicago I promise to pay B, or order, $100. A." Is this note negotiable?[329]

12. Suppose, in Case 11, B endorses the note to C. Would B be liable as an endorser?[321]

13. "Six months after date I promise to pay B the entire sum I now owe him." Is this note valid?[331]

14. "One year after date I promise to pay B, or order, $1000, with interest the same as savings banks pay." Is this a negotiable note?[331]

15. "I owe B $100, to be paid on September 1, 1900." Is this a promissory note?[337, 338]

16. A makes a note payable to B, or order, who sues him. A defends himself by showing that the note was delivered to B on condition that it was only to operate should he cause A to be restored to a certain position or office, and that he was not so restored. On these facts can B recover of A?[346]

17. Suppose, in Case 16, B had sold the note to C. Could C recover of A?[346]

18. B sues A on a note bearing date on Sunday. B proves that the note was issued on Monday. That being shown, can he recover?[362]

19. "At ten days' sight pay C. A. Manning, or order, One Hundred..... value received, and charge to the account of

"To Chas. L. Wilson, John W. Clark.
' 10 N. Charles street, Philadelphia."

Is the above a valid draft?[369]

20. Suppose, in Case 19, $100 were superscribed in the margin. Would that be sufficient to supply the omission and constitute it a valid draft?[369]

21. "At sight pay to the administrator of B, deceased." Is the payee sufficiently designated to constitute a valid draft?[368]

22. "Nine months after date I promise to pay B, or order, $100 and reasonable attorney's fees, if suit is necessary to collect the same. A." Is this a negotiable note?[348]

CHAPTER XX.

ACCEPTANCE.

381. How Drawee Is Made Liable.—Acceptance applies to bills of exchange or drafts only. He who draws the draft, called the drawer, promises the payee that the drawee will, when requested, accept the draft, and, if the drawee does not, he (the drawer) will, if duly notified, redeem it. The request, made for this purpose by the payee, or holder, of the drawee, is called a "presentment or acceptance." If the drawee is willing to comply with the conditions of the draft and honor it he can so express his intention by giving either a written or verbal acceptance.

382. Written.—It is a universal custom to accept drafts by writing across the face of the draft the word "accepted," also date and signature of the drawee. But that formality is not necessary; "seen," "honored," "presented," "I will pay the draft," or drawee's name only is sufficient. The drawee may use any form of words from which the intention to accept may be gathered. [383]The acceptance may be on a separate piece of paper. A draws a draft on B. After

it is received by C, the payee, B, writes to A, promising to pay the draft. This is an acceptance and enures to the benefit of C and all subsequent holders.

384. Verbal. —In the United States it is well settled that in the absence of statutory regulations forbidding it a verbal acceptance of a draft is valid and binding. In New York and California acceptances are required by statute to be in writing. Similar statutes have been passed in Alabama, Arkansas, Kansas, Maine, Michigan, Minnesota, Oregon and Wisconsin.

[385]"The Negotiable Instruments Law" requires all acceptances to be in writing, but does not require the acceptance to be written on the bill, as is shown in the following paragraph:

386. Written Promise to Accept.—A letter written or a telegram sent within a reasonable time before or after a draft is drawn, describing it so as to distinguish it from any other, and promising to accept it, is, if shown to anyone who takes the draft on the faith of the letter or telegram, a virtual acceptance, binding on the person making the promise. This applies only to drafts drawn at sight or at a certain number of days from date, and not to those drawn at a certain number of days after sight. B writes to A, "I have no objections to accepting a draft for you drawn at three or four months for $2500." B will be liable as acceptor on a draft for $2500 drawn in pursuance of the authority given.

387. Who May Accept.—The acceptance should be made by the drawee or his duly authorized agent. If a draft be addressed to a partnership or firm, an acceptance by one of the partners in the name of the firm is sufficient. When the place for the name of the drawee is blank, anyone who accepts it acknowledges himself to be the drawee intended.

388. When Acceptance May Be Made. —A draft may be accepted: (1) Before it has been signed by the drawer; (2) After it is overdue; (3) After it has been dishonored by a previous refusal to accept, or by non-payment, followed by protest. The holder of a draft, payable one month after sight, presents it to the drawee for acceptance, which is refused. A week after it is re-presented and accepted. The acceptance is valid. [389]If the drawee should desire it, the draft may be left with him twenty-four hours, in order to enable him to examine his account with the drawer and determine whether or not he wishes to accept it. After the expiration of this time he must return it accepted or unaccepted. If not returned the law presumes that it has been accepted.

390. General and Qualified Acceptance. —The acceptance may be general, i. e., in conformity with the terms of the draft, or qualified, i. e., one which varies the effect of the draft as drawn. The acceptance may be qualified in any of the following four ways:

1. As to Amount. —A draws a draft on B for $100. B accepts it as to $50.

2. As to Time.—A draws a draft on B payable at sight. B accepts it "payable in ten days."

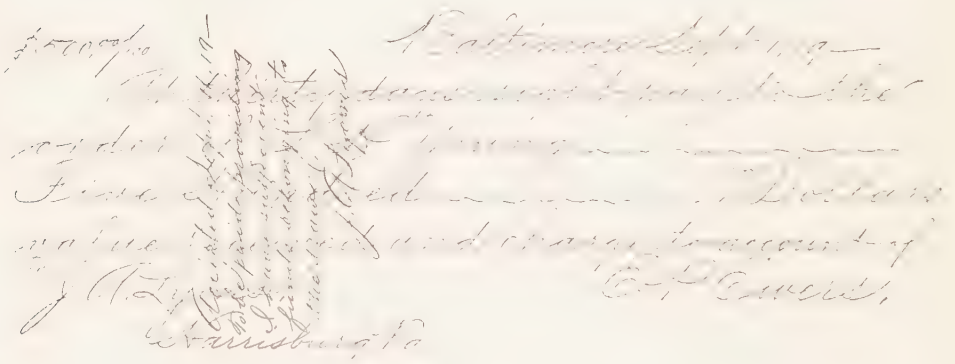
3. As to Number of Acceptors.—A draft is drawn on C, D and E. C accepts, but D and E refuse.

4. Imposing a Condition.—The drawee of a draft accepts it thus: "Accepted—Payable when I have sufficient funds in my possession belonging to the drawer."

391. Effect of Qualified Acceptance.—The holder of a draft need not consent to receive a qualified acceptance. He has a right to, and can demand, an absolute or general acceptance. If he consents to a qualified acceptance, it is valid and binding as against the acceptor and all subsequent parties and all prior parties (drawer and endorsers) who assent thereto. But prior parties who do not assent to the qualified acceptance are discharged from further liability.

[392]Suppose E. P. Ewers owes L. H. Young $500, and gives him the following draft on J. A. Lyons, who accepts it as illustrated below:

Qualified Acceptance.



[393]If J. A. Lyons has $500 belonging to the drawer, the payee, L. H. Young, can enforce payment, but otherwise he cannot. L. H. Young, having consented to the acceptance so qualified, releases E. P. Ewers, and the debt he owed is discharged. Should he fail to recover of J. A. Lyons he will lose the entire amount.

[394]If the acceptance had been written thus: "Accepted September 4, 19—. Will pay $300 of the within. J. A. Lyons"—then L. H. Young would be entitled to recover $300, and no more. If for some reason J. A. Lyons could make no payment, L. H. Young, as in the other case, would lose it all.

ANALYSIS OF DRAFTS AND NOTES.

- 9. Endorsements
  - 1. Blank.
  - 2. Full.
  - 3. Qualified.
  - 4. Conditional.
  - 5. Restrictive.
- 10. Person putting name on back of paper may be
  - 1. Surety.
  - 2. Maker.
  - 3 Guarantor
- 11. Contracts and liabilities.
  - 1. Drawee—as to drawer.
  - 2. Drawee—as to holder.
  - 3. Acceptor.
  - 4 Acceptor's estoppels..
    - 1. Admits existence of drawer.
    - 2. Admits genuineness of drawer's signature.
    - 3. Admits capacity of drawer to draw.
    - 4. Admits that he has sufficient funds.
  - 5. Drawer.
  - 6. Endorser.
  - 7. Endorser's estoppels..
    - 1. Admits bill or note to be genuine.
    - 2. Admits bill or note to be valid.
    - 3. Admits that prior parties had capacity.
    - 4. Admits that he has a good title.
  - 8. Endorser "without recourse" and holder delivering negotiable paper which passes by delivery.
- 12. Conditions of drawer's and endorser's liability.
  - 1. Due presentment for acceptance ..
    - 1. What drafts necessary.
    - 2. Time of.
    - 3. By whom.
    - 4. To whom.
  - 2. Due demand for payment .....
    - 1. Time of.
    - 2. Place of.
  - 3. Due notice of dishonor .....
    - 1. Protest ....
      - 1. Comprises.
      - 2. As evidence.
    - 2. By whom.
    - 3. To whom.
    - 4. Method of.
    - 5. Time within which to be given.
    - 6. Form of.
- 13. Due presentment, demand, protest and notice excused .....
  - 1. By circumstances of general nature which interrupt business.
  - 2. When drawer has no funds in possession of drawee.
  - 3. By waiver of protest and notice.
- 14. *Bona fide* holder.....
  - 1. To constitute one such must receive paper .....
    - 1. *Bona fide*
    - 2 For valuable consideration.
    - 3. Before maturity.
    - 4. Usual course of business.
    - 5. Without notice of defects.
  - 2. Defenses against .....
    - 1. Incapacity of parties.
    - 2 Illegal consideration.
    - 3. Want of consent.
- II. Checks .....
  - 1. How they differ from drafts.
  - 2. Liability of endorser.
  - 3. Liability of drawer.
  - 4. Time of demand for payment.
  - 5. Certified .....
    - 1. By whom.
    - 2. Effect of.....
      - 1. Makes bank principal debtor.
      - 2. Discharges drawer.
      - 3. Makes it circulate as cash.
- III. Certificate of deposit.
- IV. Accommodation paper.
- V. Lost bills and notes.
- VI. Limitations.

CHAPTER XXI.

ENDORSEMENTS.

395. Definition and Purpose.—An endorsement is "anything written on the back of an instrument which relates to that instrument." It is generally made for a twofold purpose: First, to transfer the title of the instrument; and second, to give additional security for payment. It is only negotiable paper that is subject to endorsement. Therefore, if for some reason a note is non-negotiable the title cannot pass by endorsement, nor, as previously stated, is the endorser conditionally liable for the payment of such paper. When the bill or note is made payable to bearer, or when payable to order and endorsed in blank, the title to the paper will pass by delivery, the same as a party would pass title to a $10 bill. The party who makes the endorsement is called the endorser, and the one in whose favor it is made, or to whom the paper is transferred, is called the endorsee. B, the payee of a note, endorsed it to C. B is the endorser and C the endorsee. It is now our purpose to consider the different kinds of endorsements, which are five in number: 1. BLANK; 2. FULL; 3. QUALIFIED; 4. CONDITIONAL; 5. RESTRICTIVE.

The holder may, in order to suit the circumstances under which the paper is transferred, select any one of the endorsements he prefers. They apply equally to all classes of negotiable paper, i. e., notes, checks, drafts, certificates of deposit, etc. For simplicity we submit the following note as a basis on which to explain the rules applicable to the several kinds of endorsements:

1000^{00}_{100}$ Chicago Sept 1 19—

For value [illegible] promise to pay to the order of L M Hance

One Thousand [illegible] Dollars

value received with interest.

C J Harmer.

397. Blank.—L. M. Hance, the payee in the above note, transfers it to N. O. Burnap. As the note contains the words "to the order of," transfer can be made only by an endorsement and delivery. We will suppose the payee uses a blank

or general endorsement. In so doing he would simply write his name on the back of the note as illustrated. [398]A blank endorsement has the effect of making the paper payable to bearer, even though the note is made payable to the payee or order; therefore, anyone who holds a note endorsed in blank is presumed to be the owner thereof. If the endorsee, N. O. Burnap, wishes to transfer the note, he can do so by simply passing it to another, the same as if it were a bank bill. [399]There is a very wise and just provision in law which allows the holder of commercial paper endorsed in blank to change it to an endorsement in full. This is allowed because it does not in any way affect the contract or liability of the endorser, and protects the endorsee or holder against danger of its being lost or stolen. As in the illustration, the endorsee, N. O. Burnap, may convert the blank to a full endorsement by writing above L. M. Hance's name, "Pay to N. O. Burnap, or order."

Blank Endorsement.

L. M. Hance.

400. **Full.** A full or special endorsement is one which mentions the name of the endorsee, with a direction to pay him. From the definition, it will be noticed that "order" is not necessary in an endorsement in full. The draft or note is still negotiable without it. Students should note the following distinction: On the face of the draft or note "or order" or "or bearer" is necessary to make it negotiable. In an endorsement they are not necessary. Either form as shown in the illustration is a full endorsement. The endorsee, N. O. Burnap, can negotiate the note only by his endorsement, and until endorsed he only can legally demand payment. For this reason this kind of endorsement is generally adopted among business men, because of the safety which it ensures in the transmission of negotiable paper.

Full Endorsement.

Pay to N. O. Burnap or order,
L. M. Hance.
Pay to N. O. Burnap.
L. M. Hance.

[400]If commercial paper was orginally payable to "order," and has been endorsed in blank and afterwards in full, it is still payable to bearer and transferable by delivery. In such a case the transferee acquires a title through the blank endorsement, which in all cases makes the paper payable to bearer. The party making the full endorsement is only liable on his endorsement to such parties as make title through it. Suppose L. M. Hance, the payee, endorses it in blank, and transfers it to N. O. Burnap, who endorses it in full to J. N. Roe. J. N. Roe, without endorsement, transfers it to R. C. Doe. R. C. Doe, having acquired his title through L. M. Hance's blank endorsement, is entitled as bearer to receive payment, and for such can look only to the maker, C. J. Harmer, and L. M. Hance, the first endorser. N. O. Burnap, although an endorser, is not liable as such, because R. C. Doe did not make title through his endorsement. J. N. Roe is not liable,

Blank and Full.

L. M. Hance,
Pay to J. N. Roe or order.
N. O. Burnap.

because he did not endorse the note. It is true, his name appears on the back of the note, but not as an endorser.

402. Qualified.—A qualified endorsement is one which limits the ordinary liability of the endorser. It relates only to the endorser's liability, and does not otherwise affect the negotiation of the paper thus endorsed. We will suppose that L. M. Hance, the payee, in transferring the note, uses a qualified endorsement, as illustrated. By so doing he passes his interest in the note to N. O. Burnap the endorsee, but incurs no liability as an endorser. It is held in America that an endorser "without recourse" is responsible to the same extent that a transferer by delivery is responsible. That is, notwithstanding the qualified endorsement, if the maker's name was a forgery, L. M. Hance would be liable to N. O. Burnap. More will be said on this subject under the head of "Contracts and Liabilities of the Parties."

Qualified Endorsement.

Pay to N. O. Burnap or order,
without recourse.
L. M. Hance.

403. Conditional.—A conditional endorsement is one that transfers the title to the paper to the endorsee subject to the fulfillment of a condition therein stated, as shown in the illustration. [404]On the failure of the condition the title in the paper reverts to the endorser, to whom the paper should be returned.

Conditional Endorsement.

Pay to N. O. Burnap or order upon my election to the Presidency of the B. & O. R. R.
L. M. Hance.

[405]Where the endorsement is conditional a party may disregard the condition and make payment to the endorsee or his transferee, whether the condition has been fulfilled or not. [406]But any person to whom an instrument is thus negotiated will hold the same or the proceeds thereof, subject to the rights of the person endorsing conditionally. As shown in the illustration, L. M. Hance makes a conditional endorsement to N. O. Burnap. At maturity payment is made to N. O. Burnap, although the condition has not been fulfilled. The maker is discharged from further liability. But L. M. Hance, the endorsee, can compel N. O. Burnap to account to him for the proceeds thus received.

407. Restrictive.—A restrictive* endorsement constitutes the endorsee the holder of the paper, but expresses that he is not the beneficial owner of it. That is, the ownership of the paper is not transferred. It also destroys the negotiable qualities of the instrument.

[408]All of the following forms are restrictive endorsements. The endorsee, N. O. Burnap, is simply the agent of the endorser for the purpose of collecting the money; he cannot himself endorse the paper unless authorized to do so by nego-

*Restrictive.—Having the power to limit; to confine.

tiable words, as shown in the two latter forms, and when endorsed the paper passes to the endorsee subject to the trust imposed by the restrictive words, which operate as notice to every subsequent holder. As illustrated in the form for collection, suppose N. O. Burnap sold the note to J. N. Roe, who took the note in good faith. At maturity J. N. Roe collects the money, and claims it as his, as he had given value for the note. Notwithstanding this fact, L. M. Hance can compel J. N. Roe to account to him for the money received, because the note, under a restrictive endorsement, passes subject to all the rights and claims as between L. M. Hance, the endorser, and N. O. Burnap, the endorsee.

Restrictive.

Pay to N. O. Burnap only.
L. M. Hance.

Restrictive.

Pay to N. O. Burnap, for my use.
L. M. Hance.

Restrictive.

Pay to N. O. Burnap or order, for the use of J. N. Roe.
L. M. Hance.

Restrictive.

Pay to N. O. Burnap or order, for collection.
L. M. Hance.

409. **Liability of Irregular Endorser.**—On this subject the decisions are conflicting. The "Negotiable Instruments Law," however, defines the liability of such endorsers, so that hereafter their liability will be the same in all jurisdictions. "Where a person, not a party to the instrument, places thereon his signature in blank before delivery, he incurs all the liabilities of an endorser. Thus, one who endorses a negotiable instrument before it is delivered to the payee is liable to the payee thereon as an endorser, and not as a surety* or guarantor.* Illustrations: 1. Note made by A, payable to B, or order, endorsed by C, and then delivered to the payee, B. C is liable as an endorser to B. 2. Note made by A, payable to himself, or order, endorsed by B, and delivered to C. B is liable as an endorser to C, but not to A. 3. Note made by A, payable to B, or order, endorsed by C before B, but for accommodation of B, and discounted by Bank of X. C is liable to Bank of X, and not to B.

*Surety.—One who agrees to answer for the payment of another's debt.
*Guarantor.—One who makes a guaranty.

411. **Endorsement where Name is Misspelled.**—When the name of a payee or endorsee is wrongly designated or misspelled he may endorse the paper as therein described or spelled, adding, if he think fit, his proper signature.

412. **Endorsement by Infant or Corporation.**—The endorsement by an infant or corporation of the paper passes the title therein, notwithstanding that from want of capacity the infant or corporation may incur no liability thereof.

CASES.

(Give reasons for answers.)

23. A draws a draft on B. If B writes thereon, "Presented," "Seen," "Honored," or merely his name, would it be a valid acceptance?[382]

24. B writes to A: "I authorize you to draw on me at ninety days from date for $300 in favor of C." A draws the draft in pursuance of the authority given. At maturity B had no money belonging to A, and hence refused payment. C then sued B on his acceptance. Can he recover?[383]

25. A draws a draft on B. The payee, C, presents it to D, who, although not the drawee, writes an acceptance on it. At maturity C sues D on his acceptance. Can he succeed?[387]

26. A draft is addressed to B & Co. E, a partner in the firm, accepts it in his own name. The payee sues the firm on the acceptance. Can he succeed?[387]

27. A draws a draft for $500 on B, who writes thereon, "I will pay $300 of the within. B." Subsequently B becomes insolvent. The payee then seeks to hold A liable. Can he succeed?[390]

28. A owes C $1000, and gives him a draft on B for the amount. B writes on the draft "Good, and will be paid as soon as I sell the wheat belonging to A." After unsuccessful efforts to collect of the acceptor, C sues A for the $1000. Can he recover?[391]

29. A draft is drawn payable to C, or order. C endorses it to D thus: "Pay the contents to D," omitting to add the words "or order." Is the draft still negotiable?[400]

30. "One year after date I promise to pay C $100, value received. B." C endorses the note to D. D, being unable to recover of B, seeks to hold C, the endorser. Can he succeed?[395]

31. C endorses a draft to D by way of a gift. Is C liable to D as an endorser?[312]

32. D, the holder of a note endorsed in blank by C, writes over C's signature, "Pay to D, or order." C refuses payment, because of the alteration of his endorsement. Is his defense good?[399]

33. C, the payee of a draft made payable to his order, endorses it in blank and transfers it to D. D endorses it to E, or order. E, without endorsing it, transfers it to F. Is F entitled, as bearer, to receive payment?[401]

34. In Case 33, are C, D and E liable as endorsers?[401]

35. C, the payee of a note, endorsed it to D "without recourse." D endorsed it to E in blank. E seeks to hold D and C liable as endorsers. Can he succeed?[402]

36. C, the payee of a note, endorses it to D thus: "Pay D, or order, if he be attending a business college. C." The maker of the note paid the money to D, although the latter was not attending a business college. C, the payee and endorser, brought an action to recover the

amount of the note of the maker, because payment was made contrary to the condition. Can he succeed?[405]

37. C endorses a draft thus: "Pay D only." D endorses it to E, who gave value for it. Can E recover?[408]

38. In Case 37, C sued E to recover the money which E received in settlement of the draft. Can he succeed?[408]

39. C endorsed a note thus: "Pay D, or order, only." D endorses it to E. Is E entitled to recover of the maker?[408]

CHAPTER XXII.

CONTRACTS AND LIABILITIES OF THE PARTIES.

413. **Topics Presented.**—The student will have a clearer and more comprehensive understanding of the subject, as we advance, if he will keep in mind the topics that have been presented. Thus far we have considered the difference between negotiable paper and *choses in action*, more commonly called non-negotiable paper, the seven essential requisites of negotiability, the form, the acceptance and negotiation or endorsement of drafts and notes. We will now consider the contracts of the parties and the liabilities arising under them.

414. **Drawee's Liability—As to Drawer.**—The drawee is not legally bound to accept the draft, although he be indebted to the drawer, unless he has expressly or impliedly agreed to do so. The exception to this rule is in case a check is dishonored* by a bank when the drawer has sufficient funds in the bank for its payment when presented. Under these circumstances the depositor may bring an action against the bank for damages to his commercial credit.

415. **Drawee's Liability—As to Holder.**—The drawee is in no privity of contract with the holder, and incurs no liability to him on a refusal to accept a draft. A having $100 as his bankers, draws a check on them for that sum in favor of C. The check, when presented, is dishonored. C has no remedy against the bankers.

416. **Acceptor's Liability.**—The only way to fasten the drawee's liability to a draft is through his acceptance. By his acceptance he promises to pay the payee or any subsequent holder, according to the meaning of the acceptance, and thereby becomes the primary and principal debtor on the draft.

417. **Acceptor's Estoppels.***—The acceptor, by the fact of the acceptance, conclusively admits and warrants to a *bona fide* holder the following:

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*Dishonored.—Payment or acceptance refused.

*Estoppels.—Conclusive admissions which cannot be denied or controverted.

1. The existence of the drawer.
2. The genuineness of the drawer's signature.
3. The capacity and authority of the drawer to draw.*
4. That he (the drawee) has sufficient funds.

[418]Therefore, the acceptor cannot, in order to avoid payment, set up as a defense against such a holder that the drawer's signature is a forgery, that he has no funds of the drawer, that the drawer was an infant or a married woman, or insane, or that the drawer had no authority to draw. Suppose, for illustration, a draft purporting to be drawn by A on B in favor of C is accepted by B and then negotiated. B, the acceptor, cannot, in order to free himself from liability, set up as a defense that A's signature is a forgery, or that A was an infant, and, therefore, had no capacity to draw. Suppose A draws a draft on B in favor of C. C alters the amount from $10 to $100, and then endorses it to D. B subsequently accepts it. B, notwithstanding his acceptance, may set up the alteration as a defense, and thus avoid payment. The student will observe that the acceptor does not warrant the genuineness of the amount.

419. Drawer's Liability.—The general liabilities of the drawer are secondary and conditional. He contracts that the draft shall be accepted or paid by the drawee on due presentment, and, if not, he will indemnify the holder, provided due notice of its dishonor be given him.

420. Endorser's Liability.—The endorser's liability is also secondary and conditional. He contracts that the draft or note shall be accepted or paid according to its tenor on due presentment and demand for payment, and, if not, he will indemnify the holder if due notice of its dishonor be given him.

421. Endorser's Estoppels.—The endorser of negotiable paper, by the fact of endorsing it, conclusively admits and warrants to a *bona fide* holder the following:

1. That the paper is genuine, i. e., that no signatures on the paper are forged, and that it has not been altered.

2. That it is a valid and subsisting* instrument, i. e., not void because of usury, illegal consideration, etc.

3. That prior parties had capacity and authority, and that he has a good title thereto.

[422]Suppose the holder sues D, an endorser of a note, and D sets up as a defense that the maker of the note was an infant, or that the maker's name was forged, or that the amount of the note was raised from $10 to $110. Even though D establishes any one or all of the above facts it will avail him nothing, because he is estopped, that is, denied the right to set up the invalidity of the instrument at the time of its transfer against any subsequent holder.

*Subsisting.—Having existence.

423. **Liability of Endorser "Without Recourse" and Holder Delivering Negotiable Paper which Passes by Delivery.**—Such an endorser, or holder, is not liable on any contract on the paper itself, but they admit—

1. The genuineness and validity of the instrument.
2. The capacity and authority of the parties.
3. That they had a valid title, and no knowledge of any facts which prove the paper, though originally valid, to be worthless.

If any of these facts prove to be untrue the consideration paid on the paper may be recovered. A gives B his note for $1000 payable in six months. Before maturity, because of A's insolvency, B endorsed the note "without recourse," and delivered it to C, who was a *bona fide* purchaser. At maturity C can recover of B the money or other consideration he gave for the note.

424. **Alteration of Instrument.**—Where a negotiable instrument is materially altered without consent of parties liable thereon it is avoided, except as to the party who made the alteration and subsequent endorsers. [425]But when the paper is in the hands of a *bona fide* holder, not a party to the alteration, he may enforce payment thereof according to its original tenor. This changes the law. Prior to the statute the rule was that in case of a material alteration there could be no recovery, even by an innocent holder for value.

426. **What Constitutes a Material Alteration.**—Any alteration which changes:

1. The date.
2. The sum payable, either for principal or interest.
3. The time or place of payment.
4. The number or the relations of the parties.
5. The medium or currency in which payment is to be made; or,
6. Which adds a place of payment where no place of payment is specified, is a material alteration.

CASES.

(Give reasons for answers.)

41. A depositor, having a balance of $200 at his bankers, draws a check for $100, which is dishonored. The depositor brings an action against the bank to recover substantial damages for injury to his credit. Can he succeed?[414]

42. The acceptor of a draft refuses payment because, after acceptance, he learns that the drawer is an infant, therefore not liable for his contracts. The holder sues the acceptor. Can he recover?[417, 418]

43. C forges A's signature as drawer of a draft, which is accepted by B, the drawee. Subsequently B learns that A's signature is a forgery, and refuses payment on that ground. Is it a good defense?[418]

44. The holder of a note sues the endorser, who sets up as his defense that the maker's signature was forged. Is this a good defense?[421]

45. D, the holder of a draft for $100, discounts it with a banker for $90 without endorsing it. The draft is dishonored. Is D liable to refund $90?[421]

46. D, the holder of a note payable to bearer, discounts it with E without endorsing it. It turns out that, unknown to D, the amount of the note had been fraudulently altered by a previous holder. E sues D to recover the money he paid. Can he succeed?[423]

47. D, the holder of a draft, duly presents it to B, the acceptor, for payment, which was refused. D notifies A, the drawer, also C, the endorser. D sues A, who sets up as his defense that he is not liable after the draft is accepted by the drawee. Is his defense good?[419]

48. In Case No. 47, if D fails to recover from the drawer, can he legally look to the endorser for payment?[420]

CHAPTER XXIII.

CONDITIONS OF DRAWER'S AND ENDORSER'S LIABILITY.

427. Duties of the Holder.—The drawer and endorser do not promise to pay absolutely and at all events. They promise to indemnify the holder only in case he performs certain conditions, which are:

1. Due presentment of the draft for acceptance.
2. Due demand of the maker or acceptor for payment.
3. Due notice of dishonor to the drawer or endorser.

428. Due Presentment for Acceptance.—1. What Drafts to Be Presented. It is necessary to present only those that are drawn at or after sight.

[429]2. Time for Presentment. When the draft is drawn at or after sight it must be presented within a reasonable time, which is a mixed question of law and fact. Reasonable time may be affected by various circumstances, such as (a) the fluctuation of the rate of exchange, (b) the facilities of communication between the parties, (c) other necessary causes of delay, i. e., war, sickness, etc. A of Columbus draws a draft on B of London, payable ninety days after sight. The payee holds it back for two months, during which time London bills are at a discount. He then negotiates it. This is an unreasonable delay, and should the drawee, B, refuse to honor it, the drawer, A, would not be liable.

[430]3. By Whom Presented. Presentment for acceptance ought to be made by the holder or his duly authorized agent.

[431]4. To Whom Presented. The presentment should be made to the drawee or his duly authorized agent, i. e., bookkeeper or clerk in his office.

432. Due Demand for Payment.—1. Time of Demand. The holder must present the draft or note on the day of maturity. If made on the day before or

the day after the due date, unless authorized by established custom, the demand for payment will be nugatory. E holds a note endorsed by C and D. Wishing to leave the city on the day of maturity, E made a demand for payment of the maker the day before it was due. The maker refused payment, whereupon E notified the endorsers, C and D. The endorsers are not liable, because the demand for payment was not made on the right day. [433]If the demand for payment be made at the maker's or acceptor's place of business it must be within business hours. If at his residence, it must be within those hours which the maker or acceptor is presumed to be in a condition to attend to business. [434]The holder of a note presents it at 11 o'clock P. M. at the maker's private residence. This is an unreasonable hour; hence not a good presentment. But when the demand for the payment is made at an unreasonable hour, and payment refused on some other ground, the draft or note is deemed to have been duly presented. If, in the above illustration, the maker did not object to the lateness of the hour, but simply denied his liability on the note, or claimed it to be a forgery, or for some other reason would not pay it, the demand would have been sufficient, and the endorsers would be liable upon receiving due notice of its dishonor. [435]When a draft is drawn payable at sight or on demand, it must be presented for payment either on the day it is received or the day following. If the drawee and holder live in different places it must be forwarded by mail not later than the day after its receipt.

[436]2. Place of Demand. The general rule is that the holder must exercise due diligence to find the acceptor or maker. When the place is mentioned the demand should be at that place. If no place be stated, then the demand should be made at the debtor's place of business. The place of the date of a note is *prima facie* evidence of the debtor's place of business, and, therefore, the place of payment. [437]But if the place of business or residence is elsewhere, and such fact be known to the holder, he must present the paper there. Suppose A of Hagerstown while in Pittsburg on business issued his note to B. The note was dated thus: "Pittsburg, September 1, 1905." Before maturity B endorses the note to C. If C wishes to look to B for payment, should A, the maker, dishonor it, he must demand payment of A in Hagerstown, Md., the place of his residence or domicile.

[438]A personal demand on the street is good, provided no objection be made to the place where the demand is made. The holder of a note meets B, the maker, on the street on the day of maturity, and presents it for payment. B merely says he is unable to pay it, and raises no objection to the place of the demand. This is a due presentment, and would be sufficient to bind the endorsers if notice of dishonor be given them.

CASES.

(Give reasons for answers.)

50. A draft which has been accepted by a merchant is presented to him for payment at his country home at 9 P. M. Payment being refused, the drawer is duly notified and subsequently sued. Can the holder recover?[432]

51. A draws a sight draft on B in favor of C, who resides in the same city as B. After keeping the draft in his possession four days, C presents it for payment. The draft is dishonored. C seeks to hold A liable. Ought he succeed?[435]

52. A merchant of Wilmington, while in New York city, gave B his note and dated it "New York City, September 1, 1905." B endorsed the note to C, who knew that the merchant's place of business was in Wilmington. At maturity, C presented the note for payment to the merchant in New York city, who replied that his business was attended to in Wilmington; whereupon, without any further demand, C notified B of the dishonor, and sought to make him liable. Can he succeed?[436]

53. D holds A's note, which was made payable at First National Bank. The note had been endorsed by B and C. At maturity, D presented the note to A at his place of business, and, not being paid, he duly notified B and C. Are B and C liable for payment?[436]

54. D, the holder of a note, which is silent as to place of payment, presents it to A, the maker, on the street on the day of maturity. A replies that he has no money with which to redeem his note; whereupon D notifies the endorsers of its dishonor. Are the endorsers liable?[437]

CHAPTER XXIV.

DUE NOTICE OF DISHONOR.

439. Conditional Liability Made Absolute.—If the drawee refuses to accept or to pay a draft, or the maker of a note refuses payment, the endorser or drawer, or both, must receive notice of such refusal. When such notice is given their liability is no longer conditional, but absolute. In consideration of the fact that it is often difficult to prove that there was a proper presentment, demand and dishonor, the Law Merchant* requires that all foreign bills of exchange* must be protested. The benefits of protest have also been extended to drafts, checks and notes. Although it is usual for the holder to have drafts, checks and notes

*Foreign Bill of Exchange.—A foreign bill of exchange is one of which the drawer and drawee are residents of different countries, or residents of countries that are foreign to each other. In this respect the States of the United States are held to be foreign as to each other; therefore, a draft drawn by A of Chicago, Ill., on B of Detroit, Mich., would be a foreign draft or bill of exchange.

*Law Merchant.—Commercial law.

protested, yet it is not obligatory upon him to do so. The advantages gained by having the paper protested will be noticed under "Evidence of Protest."

440. The Protest as Evidence.—Protest is, by the Law Merchant, made *prima facie* evidence of (1) due presentment for acceptance, and (2) due demand for payment and its dishonor, but not of notice, for, as already stated, it is not the duty of the notary public to give notice. [441]This law formerly applied to foreign bills of exchange only. The legislatures of the different States have passed laws which extend to inland bills and promissory notes the credit given to the protest as in foreign bills of exchange, and makes the notary's certificate *prima facie* evidence of the presentment for acceptance or demand for payment and the protest of the paper for non-acceptance or non-payment.

[442]When the notary public sends notice to the endorsers or drawer for the holder, the same act provides that if the certificate of protest shall state (as in the form given) that notice of such non-payment or non-acceptance has been sent or delivered to the drawer or endorser of draft or note, and the manner of sending the notice, such protest shall be *prima facie* evidence that such notice has been sent in the manner therein stated. [443]The effect of this act is to make the protest of the notary *prima facie* evidence that notice has been given in the manner described in the protest. And for this reason, although not necessary, it is customary to have all drafts and notes protested when there are endorsers.

CERTIFICATE OF PROTEST.

STATE OF ILLINOIS, to wit:

On this, the first day of September in the year of our Lord nineteen hundred and five at the request of the endorsee, J. N. ROE, bearer of the original Promissory Note, whereof a true copy is attached hereto, I, Thomas Kell Bradford, Notary Public, by letters patent under the Great Seal of Illinois, commissioned and duly qualified, residing in the City of Peoria, in the State aforesaid, presented the said promissory note to the maker, C. J. Harmer, and duly demanded payment thereof, which was refused.

Wherefore, I, the said Notary, at the request of the aforesaid endorsee, HAVE PROTESTED and by these presents DO SOLEMNLY PROTEST as well against the endorser of the said Promissory Note as all others whom it may concern, for exchange, re-exchange, and all costs, charges, damages and interests suffered and to be suffered for want of payment of the said Promissory Note.

This done and Protested at the City of Peoria aforesaid, and on the same day I addressed written notices to the endorser of said Promissory Note, informing him that it had not been paid, payment thereof having been demanded and refused, and that he would be held responsible for the payment thereof.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal the day and year aforesaid.

THOMAS KELL BRADFORD, Notary Public.

Protest	*$2 00*
Notices and postage	*30*
	$2 30

444. **Protest.**—By protest we mean a certificate of a notary public attesting the dishonor of commercial paper. If no notary public can be found the protest may be made by a private person in the presence of two or more creditable witnesses.

445. **What Protest Comprises.**—1. The notary public or his clerk or runner must present the paper to the drawee, acceptor or maker for acceptance or payment. 2. Note the dishonor. This means to write on the back of the instrument date of refusal to accept or pay, reason, if any, charges of protest and his initials. 3. Extension of protest: The meaning of which is that the notary must write out from the memorandum an official certificate, the usual form of which is shown on the preceding page.

446. **Notary May Give Notice.**—It is no part of a notary's public duty to send notice to the drawer or endorser. His official duties connected with making the protest are entirely separate and distinct from the duty to give notice of dishonor. However, the notary does often give the required notice, as is shown in the certificate. When he does so he is simply acting as agent for the holder.

447. **Who May Give Notice of Dishonor.**—The notice of dishonor should emanate from the holder of the instrument or his duly authorized agent. It is not absolutely necessary that it should come from him. Thus, if the holder duly notifies the fifth endorser, and he the fourth, and the fourth the third, and so on to the first, the latter will be liable to all the parties.

448. **To Whom Notice of Dishonor Should Be Given.**—It should be given to every collateral party, endorsers and drawer, whom the holder wishes to make liable. The acceptor of a draft and the maker of a note are not entitled to notice, they being the primary and principal debtors; hence the first to know of its dishonor. Suppose there are five endorsers; the holder may notify the second and fourth only, he not wishing to look to the first, third and fifth for payment. When the fourth receives notice he should, if he wishes to hold them liable, see that those before him have notice, for if they receive no notice that payment was refused they will be discharged.

449 Their liability to each other is as follows: The fifth, who is the last endorser, is liable to the holder only, and not to those who precede him; the fourth is liable to the fifth and holder, but not to the third, second and first, and so on down to the first endorser. Therefore, if the first endorser be required to pay the note he can look to the maker only, for, as illustrated, those who follow are not liable to him.

450. **Time Within Which and Method of Giving Notice.**—Notice of protest may be given personally or by letter. When the person giving and the person to

receive notice reside in the same place, the notice, if given personally, must be given not later than the day following. [451]If sent by mail it must be deposited in the postoffice in time to reach him in usual course on the day following. If the parties live in different places the notice, if sent by mail, must be deposited in the postoffice in time to go by mail the day following the day of dishonor. If given otherwise than through the postoffice, then within the time that the notice would have been received in due course of mail. Each successive endorser receiving notice is entitled to one day to transmit notice to any previous endorser who may be liable to him.

452. **Form of Notice.**—No precise form of words is necessary in giving the notice. It may be given verbally or in writing. It is essential, however, that the notice should be sufficient to identify the instrument and to show that the paper was duly presented for acceptance or payment, as the case may be, and dishonored.

[453]The following notarial notice is one in general use:

NOTICE OF PROTEST.

Peoria, September 2, 19 .

Please take notice that a Promissory Note

Dated August 1st, 1905

Payable one month after date

To the order of L. M. Hance

For One Thousand Dollars

Payable at Drovers and Mechanics National Bank

Now due and by you endorsed, is delivered to me by the cashier of the Drovers and Mechanics National Bank of Peoria *for protest, and the same not being paid, payment thereof having been demanded and refused, is protested, and you are held liable for the payment thereof.*

Yours respectfully,

Thomas Kell Bradford, Notary Public.

PROOF OF NOTICE.—The proof of notice may be by parol or by certificate of notary public.

454. Due Presentment, Protest and Notice Excused.—The holder may be excused from a failure to perform the things that are necessary to make the contingent liability of the endorser or drawer absolute by circumstances of a general nature or by waiver. Circumstances of a general nature may be classified as follows: (1) Breaking out of war; (2) public and positive prohibition of commercial intercourse; (3) political disturbances amounting to a virtual interruption and obstruction of trade; (4) the prevalence of a malignant epidemic disease, i. e., yellow fever; (5) overwhelming calamity or unavoidable accident, i. e., floods, robbery of mails, etc. As soon as the impediment ceases, the duty of presentment, protest and notice revives. [455]If the drawer had no funds in the possession of the drawee, or had no reasonable grounds for believing the drawee would accept, he is not entitled to notice of dishonor.

456. Waiver.—Again we ask the student to bear in mind that the agreement of the endorser or drawer is that he will indemnify the holder if due demand for payment be made and due notice of dishonor be given. [457]This right, which he is entitled to demand, may be waived, i. e., he may agree to make himself absolutely liable, so far as demand and notice are concerned. This is called a waiver. It is the relinquishment or giving up of some right which one is entitled by law to demand. The demand and notice may be waived expressly or impliedly, verbally or in writing, on the instrument or by a separate paper, and before, after or at the time of the transfer of the instrument. [458]When the express words "presentation and protest waived" are written in the instrument they become binding on all the parties thereto. But when put over the signature of an endorser it applies to that endorser only. The expression, "I waive demand and notice," "Presentation and protest waived," or "I waive protest and notice," written over an endorser's signature, means that he waives or gives up all steps usually necessary to fix the liability of the drawer or endorser, i. e., all steps ordinarily taken are dispensed with.

459. No Excuse.—If knowledge of the insolvency or bankruptcy or death of the acceptor or maker has come to the holder, or if the instrument has been lost or mislaid, it is no excuse for him not to take the necessary steps required to hold the drawer or endorser. Suppose E, the holder of a draft, endorsed by C and D and accepted by B, learns that B has become insolvent, and, knowing that he cannot pay the draft, makes no demand, but notifies the endorsers that he will look to them for payment. In such a case the endorsers would not be liable.

CASES.

(Give reasons for answers.)

55. A draft endorsed by C and held by D is dishonored. E, who is in no way acting on D's behalf, informs C that the draft has been dishonored. Is this notice sufficient to hold the endorser, C?[447]

56. C, D and E are endorsers of a draft. The holder notifies D of its dishonor. To whom may he look for payment?[448]

57. A, B, C, D and E are endorsers of a note. The holder notifies each endorser of its dishonor and recovers of B, the second endorser. B then sues C for indemnification. Can he succeed?[449]

58. C is the first endorser, D the second endorser and E the holder of a note. C and E reside in the same city while D and E reside in different cities. E sends notice of its dishonor by mail to both endorsers, who claim that the notice was never received. Was the notice given sufficient to make both endorsers liable?[450]

59. B refused payment of his note on Monday. D, the holder, notified C, the endorser, on Wednesday, and sued him to recover. Can he succeed?[450]

60. D, the holder of a note, sues C, an endorser. C's defense is that the notice of dishonor was given him verbally. That being his only defense, can D recover?[450]

61. A draws a draft on B, who is under no obligation to accept or pay it, and has not implied that he would do so. It is presented and dishonored. C, the payee, does not send the drawer notice of dishonor. Is the drawer discharged from liability?[455]

62. The following is written on the back of a note: "I waive demand and notice. C." D, the holder, neglects to demand payment on the day of maturity, and when demand is made the note is dishonored. Is C liable as an endorser?[457]

63. C endorsed a note thus: "I waive protest and notice. C." The holder demanded payment on the day before maturity, which was refused. The holder sues C to recover, who sets up as his defense that there was not a due presentment for payment, also that he received no notice of dishonor. Is his defense good?[458]

CHAPTER XXV.

BONA FIDE HOLDER.

460. Negotiable Paper Imports Consideration.—As between the immediate parties to a negotiable instrument—parties between whom there is privity of contract—the only superiority of a draft or note over any other evidence of debt is that it on its face implies a consideration. [461]As between parties who are not immediate, i. e., maker and endorsee, there are many other points of superiority than that of consideration, provided the endorsee or holder be what is termed a "*bona fide* holder."

462. What Constitutes a Bona Fide Holder.—To constitute a person a *bona fide* holder he must have taken the paper (1) in good faith; (2) for a valuable consideration; (3) before maturity; (4) in the usual course of business; and (5) without any notice of any defects. A purchaser of a negotiable instrument under these circumstances takes it free from all equities that exist between the preceding parties, as, for example, if the note or draft was without consideration originally,

or if the consideration had failed, or if the paper had been paid, and not taken up, and even though it was originally obtained by fraud, theft or robbery, such a purchaser could recover, while between immediate parties, as the maker and payee, if there was no consideration, or the consideration had failed, or the note had been obtained from the maker by fraud, theft or robbery, the payee could not recover from the maker. Thus it is that a *bona fide* holder may acquire a much better title than the party from whom it was received. We shall briefly consider each of the elements named.

463. Bona Fide.—This means in good faith, as distinguished from *mala fide* (bad faith). C, the holder of a note, transferred it by endorsement to D for value. D knew that C had obtained the note by fraud, but was not a party to it. D is not a *bona fide* holder.

464. Valuable Consideration.—Any consideration which is sufficient to support a simple contract.

465. Before Maturity.—The fact that a draft or note is overdue should lead one to inquire why the holder himself does not collect. A purchaser after maturity gets no better title than the party from whom it was bought; therefore, in order to take it free from the equities that exist between immediate parties it must be bought before the maturity of the paper. A draws a draft on B payable to his own order. B accepts the draft subject to a certain condition then verbally agreed to. A endorses the draft after maturity to C. C takes the draft subject to the aforesaid condition, although he had no actual notice of it. Had C taken the draft before maturity, then he would have taken it free from the condition.

466. Usual Course of Business.—In the ordinary and usual course of business means transferring the paper according to the usages and customs of commercial transactions. A transferee, without endorsement, when the instrument requires an endorsement, does not take it in the ordinary course of business. A note is made payable to C, or order. C transfers the note without endorsement to D. D is not a *bona fide* holder, because he did not receive it in the usual course of business. It required an endorsement to transfer the title.

467. Without Notice.—A *bona fide* holder must be without notice of dishonor or of any fraud or defect of title or of any other fact which impeaches its validity in transferer's hands. D, the holder of a draft, endorsed in blank, transferred it to E for value. E suspects that D had obtained the draft by a false representation, and consequently makes no inquiries. As a matter of fact, D stole the draft. E is not a *bona fide* holder; he is affected with notice.

468. Apparent Exception.—There is an apparent exception to this rule. It is stated by Hon. Judge Chalmers thus: "A holder who derives his title to a draft through a *bona fide* holder for value without notice has all the rights of such *bona fide* holder against the acceptor and all prior parties, although he himself

may have given no value, and may be affected with notice." The following will illustrate the rule: C, a partner in a firm, fraudulently endorses the firm's draft to D in payment of a private debt. F knows of the fraud, but is not a party to it. D endorses the draft to E, who takes it for value and without notice, making him a *bona fide* holder. E endorses it to F. F, although he had notice of the fraud, acquires E's rights. He can sue all the parties to the draft. The reason for the rule is that if it were otherwise it might destroy the rights of a *bona fide* holder to negotiate the instrument. Thus, F might have been the only person to whom E could have sold the draft; if so, and he could not have given him a good title, it would greatly destroy the valuable rights and privileges of a *bona fide* holder.

469. Defenses Available Against a Bona Fide Holder.—There are certain defenses which the maker or acceptor may set up and defeat the payment of a note or draft even in the hands of a *bona fide* holder. The maker or acceptor is not liable to a *bona fide* holder when the instrument is shown to be void by reason of:

1. Incapacity of parties, i. e., when the maker or acceptor is an infant, a married woman, or a lunatic, etc.

2. Some statute law declaring the contract utterly void because of illegal consideration.

3. Want of consent to the contract by the party sought to be bound. There is want of consent when the signature is forged, or paper materially altered, or the signature affixed or paper delivered under duress. Neither is the maker bound on a note passed into circulation which is stolen when incomplete (*contra*, when complete), nor when the note is constructed over his signature.

[470]Suppose B, an infant within three months of attaining his majority, accepts a draft drawn on him for necessaries, or gives his note for the same purpose, payable one month after date. The infant thereby incurs no liability on the draft or note, because of his incapacity to contract. A gave his note to B for an illegal consideration, which the statute declares to make the contract void. B endorses it to C, a *bona fide* holder, for value and without notice. C cannot recover of A, but he can of B.

[471]C having found a piece of paper on which B's signature was written, constructs a note over the signature. C endorses the note to D, a *bona fide* holder. D cannot recover of the maker, because he never gave his consent to the contract. The same rule applies to forgery. No person is liable on an instrument to which his signature has been forged, and no right or title can be derived through a forged signature.

[472]C, the payee of a note, endorses it in full to D. D loses the note, and it is found by E. E, in order to negotiate the note, forges D's signature as endorser, and then, in turn, endorses it to F, a *bona fide* holder. F acquires no title to the note; he cannot enforce payment against any of the parties thereto, and should the maker or any endorser pay him the payment would be invalid.

CASES.

(Give reasons for answers.)

64. B, the payee of a note, endorsed it to C by way of a gift. Is C a *bona fide* holder?[464]

65. In Case No. 64, suppose the note is dishonored, and due notice sent to the endorser, B. Can C recover of B?[462]

66. B accepts a draft drawn by A for $100, which is the agreed price for two bales of cotton to be supplied B by A. A delivers only one bale. A endorses the acceptance to C, a *bona fide* purchaser. C sues B, who sets up as his defense that there was a failure of the consideration. Is his defense good?[462]

67. A bought of B 1000 bushels of wheat, which was to be of a quality known as No. 1, and gave for the same his promissory note. When the wheat was delivered it was of an inferior quality known as No. 2. B sues A to recover the whole amount of the note. Can he succeed?[462]

68. By means of fraudulent representations A obtained from B two negotiable notes made payable to A, or order. One note was dated September 1, 1905, at six months, for $500; the other was dated September 1, 1905, at one year, for $10.00. On July 1, 1906, A sold and endorsed both notes to C, who took them in good faith and for value. C sues B to recover on both notes. B sets up the fraud practiced on him as his defense. Can C recover?[465]

69. A removes the flyleaf from B's book on which B's signature is written, constructs a note over it, and endorses it to C, who is a *bona fide* purchaser. At maturity C sues B to recover. Can he succeed?[471]

70. A endorses B's note to C, who is a *bona fide* holder; B is a minor, which fact was unknown to C when he bought the note. Is B liable to C for payment of the note?[470]

71. A gives B his note for $1000; the consideration for the same is that B shall murder C. The note finds its way into the hands of D, a *bona fide* holder. D sues A. Can he recover?[469]

72. A note made payable to John Smith, or order, is, through his carelessness, lost. Another person by the name of John Smith finds the note and endorses it to D, who is a *bona fide* purchaser. Can D recover of the maker?[472]

CHAPTER XXVI.

CHECKS.

473. Definition.—As the bank becomes the custodian of, and, therefore, responsible for all money deposited, it will not pay any of the money entrusted to its care for safe keeping without an order of the depositor, that is, his check. Therefore, a check is a draft or written order drawn on a bank or banker, directing it to pay a certain sum of money to a person named therein or to his order. Although the money belongs to the depositor, and he be ever so well known at the bank, yet the bank will not pay him any part of the money deposited unless he draws a check. The reason for this is that the bank must have a voucher (de-

positor's order) for the money it pays out. At stated periods, usually when the bank book is balanced, these checks or vouchers are returned to the depositor, so that he can see they are his own written orders on which the money was paid on his account.

474. Differences Between a Check and a Draft.—Though a check is a draft or bill of exchange, it differs therefrom in the following essential characteristics:

1. The form and wording differ.

2. A check is drawn upon a bank or banker; a draft is drawn on an individual or firm.

3. A check is used for paying money; a draft is used as a means of collecting money from a debtor.

4. A bank is under legal obligations to pay a check when properly drawn and presented, if it have funds belonging to the drawer; the drawee of a draft is under no legal obligation to honor it.

475. A check has all the essential elements of a draft, but its construction is somewhat different, as the drawee's name does not appear in the lower left-hand corner, as is usual in drafts, but generally in the body of the check, as is shown in the following form:

CHECK.

$1000 7/100 Chicago, Sept. 1, 19—

American National Bank

Pay to the order of James W. Brown

One Thousand 7/100 Dollars

C. C. Lister

476. Drawer of a Check.—The drawer of a check stands upon a different footing from the drawer of a draft. He is regarded as the principal debtor, and negligence of the payee or holder in making due presentment, or in giving him (the drawer) due notice of its dishonor, does not discharge him from liability, unless he (the drawer) has suffered some loss from such negligence. Were it otherwise the drawer would profit by neglect of the holder, which could do him no injury. If the funds be lost, as in the case of the failure of a bank, on account of the holder's neglecting to make a due presentment for payment, he must bear the entire loss. A draws a check in 1904 in favor of C. It is not presented to the bank until 1906, and is then dishonored. A is not discharged from liability,

although no reason for the delay is shown. The holder can sue him and recover. A check drawn by A on a St. Louis bank is handed to the payee in St. Louis on Monday. On Wednesday morning the bank on which it was drawn failed, A having at that time sufficient funds there to meet it. The check is presented for payment on Wednesday afternoon. A is discharged from all liability, because he had the money in the bank to pay the check had it been duly presented.

477. Endorser of a Check.—An endorser of a check is absolutely discharged from liability if presentment for payment be not made by the endorsee within a reasonable time after he receives it and due notice of dishonor be given the endorser the same as when drafts and notes are dishonored.

478. Time of Presentment.—If the person who receives the check and the banker live in the same place, the check must be presented for payment not later than the day after it is received; if they live in different places the holder may forward it by mail on the day after it is received to some person or bank at the place where the bank is, which person or bank may present it on the day after it is received. C of Cleveland receives on Monday a check drawn on a Cleveland bank. On Tuesday, instead of presenting it himself, he deposits it with his banker, who presents it on Wednesday. C has not presented the check within a reasonable time. If there were endorsers they would be discharged. Checks may be, and usually are, protested, the same as any other drafts or inland bills of exchange.

479. Check "Raising."—In filling out a check the utmost care should be used in order that the amount cannot be altered or changed. No blank space should be left where the amount is written, so that the check cannot be "raised" by any dishonest person into whose hands it may come. In filling out the check, begin the words representing the amount at the extreme left end of the line, filling the remaining space to the right with a waved line. If the drawer be careless and fail to protect the check from being raised, the loss will fall on him, but if he use care and diligence to prevent such a change, and the bank pay the raised amount of the check, it must bear the loss.

480. Identification.—Checks are usually drawn payable to a certain person or to his order, so that they cannot be used except by the proper person. A check so drawn must be endorsed by the payee before it can be used. If the bank on which the check is drawn should pay the check on a forged endorsement it would be responsible for the loss. When the payee or holder of a check applies to the bank for payment he must be known to the paying teller or be identified. One way to do away with the necessity for identification is for the payee to endorse the check in the presence of the drawer and have him (the drawer) add the words "endorsement guaranteed," and sign his name. In such a case the bank will not require identification.

CASES.

(Give reasons for answers.)

73. The First National Bank dishonored a check drawn on it by A, because he had no funds in the bank. The holder did not have the check protested, nor did he give the drawer notice of dishonor until about two weeks afterwards. Is the drawer discharged from liability?[476]

74. A check drawn by A, and endorsed by B, C and D, was presented to the bank for payment by E, the holder. The bank dishonored it. No notice of dishonor was sent to the endorsers or drawer. To whom can E look for payment?[477]

75. On Tuesday A gives B a check on the First National Bank. The bank stopped payment on Wednesday morning, at which time it had funds of A's sufficient to meet the check. B went to the bank Wednesday afternoon, before the close of banking hours, to demand the payment of the check. Is the drawer discharged from liability?[478]

MISCELLANEOUS CASES.

1. A held B's note for $500, which had been made payable to C, or order, at the Merchants Bank, and had been endorsed by C to A. On the day of maturity the holder, A, presented it for payment, not at the bank, but at B's residence. Payment being refused, he duly notified C. Had the note been presented at the bank it would not have been paid, because B had no funds there to meet it. Is C liable for the payment of the note?

2. C secures B's note through fraud. C holds the note until after maturity, when he endorses it to A, who received the note in good faith and for value. Is B liable on the note? Would B's liability be the same had A received the note before maturity?

3. A had $500 on deposit in the American National Bank, and drew a check on the bank payable to B, who presented it to the bank, but for some unexplained reason payment was refused. Can B compel the bank to pay the check?

4. A, a Cincinnati merchant, drew on B, a Philadelphia customer, for $700, payable at sight and in favor of C. The draft was not presented to the drawee until one month after it was drawn, at which time B had failed. Is A liable?

5. A, a minor, was indebted to B. He executed and delivered to B his note, which B endorsed in full to C. Is A liable to C? Is B liable?

6. A draft purporting to be drawn by A upon B for $750, in favor of C, and endorsed by C to E, is presented to B and by him accepted. The signature of A proves to be a forgery. Is B liable?

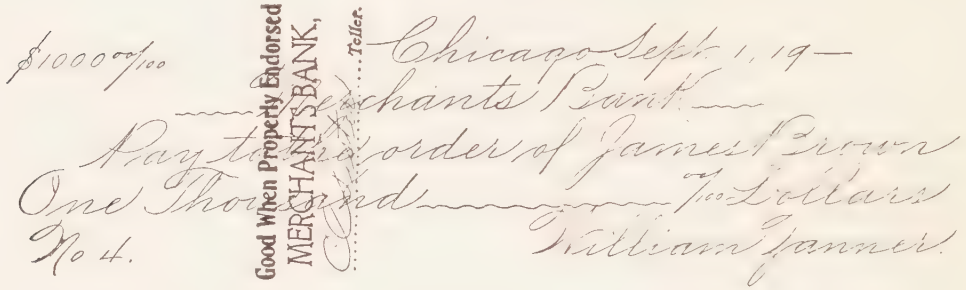
CHAPTER XXVII.

CERTIFIED CHECKS, CERTIFICATES OF DEPOSIT, ACCOMMODATION PAPER, LOST PAPER, BILL OF LADING, STATUTE OF LIMITATIONS.

481. Certified Checks.—A check being payable immediately on demand, the holder can only present it for payment and the bank can only fulfill its duty to the depositor by paying it. But by the consent of the holder, the president

cashier or teller may certify the check to be "good" instead of paying it. The following shows the manner in which it may be certified:

CERTIFIED CHECK.

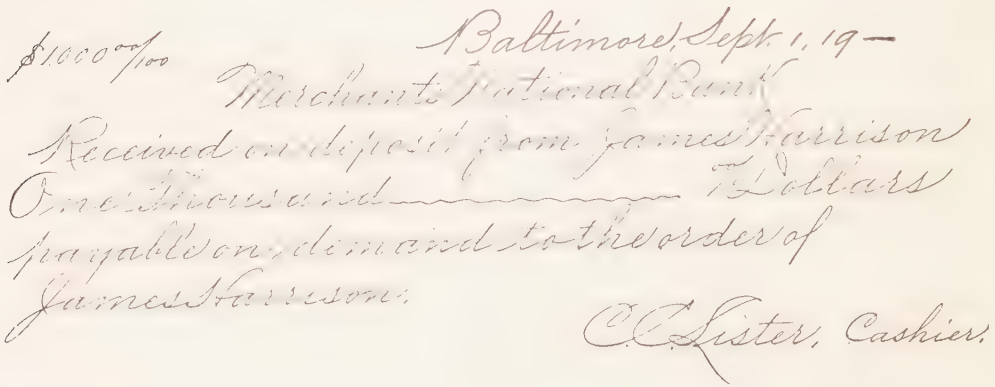


482. Effect of Certification.—When the check is certified for the holder the effect is as follows:

1. It makes the bank the principal debtor.
2. It discharges the drawer of the check.
3. It enables the check to circulate as the representation of so much cash in the bank, payable on demand to the holder.

483. After Certification.—It will be too late after the bank has certified the check for the drawer to revoke it. The bank will be bound to pay it, though notified not to do so; nor can the bank say that the check was forged, or that it had no funds to meet the check. A draws a check in favor of C on a Baltimore bank. C, instead of drawing the money, requests the bank to certify it. The following day the bank fails. C has no recourse to A. He alone must bear the loss.

CERTIFICATE OF DEPOSIT.



484. Certificate of Deposit. —A certificate of deposit is a receipt of a bank or banker for a certain sum of money received upon deposit. It is generally worded as a promissory note, payable to the depositor or to his order, or bearer, as shown in the preceding form.

485. Bank's Liability.—The bank's liability for the payment of its certificates of deposit is the same as the liability of the maker of a note. The certificates of a bank circulate as freely and are received with as much confidence as the bills of a bank, and are regarded as cash in all mercantile affairs. They are usually made payable on demand, but not infrequently they are made payable at a certain time in the future. The transfer of a certificate of deposit is governed by the same rules which control other commercial paper. If payable to bearer it may be transferred by delivery, but if payable to order, must be endorsed.

486. Accommodation Paper.—When the acceptor of a draft or the maker of a note, though ostensibly the principal debtor, is in reality a mere surety for some other person, then such paper is an accommodation draft or note. The object of the person accommodating is to lend his name to some other person as a means of credit. A draws a draft on B, who accepts it to accommodate A. It is negotiated. This is an accommodation draft.

[487]The party who accommodates is in no way liable to the party accommodated. Thus, if A gives his note to B in order that B may raise some money on it, B could not recover of A, the maker, because of no consideration. But if the note goes into the hands of a third party, then A is liable, as maker, to such third party. That is, if B discounts the note at a bank, A cannot escape his liability as maker. If the person who accommodates, i. e., A, is compelled to pay, he can recover the amount, with all costs and charges, from the person accommodated, B.

488. Lost Paper.—By common law, no action could be brought to enable the owner of a lost draft or note to recover the amount due on it, because there is in such cases no provision in the law whereby the acceptor or maker could demand any indemnity of the owner of a lost draft or note in case such a paper got into the hands of a *bona fide* holder. But there are a few exceptions to that rule, which are founded on reason and justice. [489]If the draft or note had been destroyed, or had been traced to the defendant, or if it were non-negotiable, or required the endorsement of the party losing it to render it negotiable, then the owner could recover, because there is, in such cases, no possibility of the instrument ever finding its way into the hands of a *bona fide* holder.

490. Provisions Have Been Made by Statute throughout the United States whereby the owner of a lost paper can recover in cases which do not fall within the above exceptions. The statute substantially provides that the party seeking to recover shall give the acceptor or maker a bond of indemnity which will secure him against loss. Suppose the draft or note were made payable to bearer, and

happened to be lost or stolen from the holder, and found its way into the hands of a *bona fide* holder for value, then the new holder could lawfully claim payment. The maker, however, would not sustain any loss, because he can, by means of the bond of indemnity, reimburse himself from the party giving the bond. To illustrate, suppose C lost a note made payable to bearer, or order, and endorsed in blank. The note was found by D and sold to E, a *bona fide* holder, for value. At maturity C sues B, the maker. The court will require C to give B a bond of indemnity; thereupon B will be compelled to pay the amount, although the note is not surrendered to him. In a few days the *bona fide* holder presents the note to B for payment, who is required to pay it. B can, without loss to himself, pay the note the second time, because C will be required to reimburse him. The loss then falls upon C, the party who ought to bear it, because it was probably through his carelessness or neglect that the note was lost. When paper of this kind is lost an advertisement is sometimes put in the newspapers. Such a notice, however, does no good unless the party to whom the paper is offered has read or heard of the notice.

491. Bill of Lading.—A bill of lading is a written acknowledgment of the receipt of certain goods by a common carrier, who promises for a consideration to transport and deliver the same at a specified place to a person therein named or his order. It is both a receipt and a contract. In so far as the bill of lading admits of the character, quality or condition of the goods at the time they were received by the carrier, it, like all receipts, may be explained or contradicted by parol proof, but as respects the agreement to carry and deliver, it is a contract and may be construed according to its terms.

492. Assignment of.—Bills of lading are usually so worded as to make them negotiable the same as other commercial paper. A *bona fide* endorsee becomes, as against all the world, the owner of the goods, free from any equities existing between the consignor of the goods and the consignee. Though one who has stolen a bill of lading cannot assign it so as to pass title to the merchandise, yet a *bona fide* assignee of one who has obtained such bill by fraud from the owner has good title against the owner as well as against third persons. Though the assignee should become insolvent without having paid for the goods, yet his assignment, made for a valuable consideration and without notice to the assignee that the goods were not paid for, has been held to pass them absolutely to the assignee and deprive the consignor of his right to recall the goods before they were delivered, which, as against the original consignee, he might have exercised. But if the assignee of the bill of lading knew that the consignee was insolvent, and assisted to defraud the consignor of the price of his goods, he stands in the same situation as the consignee, and the consignor retains his right to stop the goods *in transitu*. To illustrate further, we will suppose Smith & Co., of Richmond, ordered goods from Brown & Co., Chicago. The consignor, Brown & Co., sends

the bill of lading to the consignee, Smith & Co. While the goods are *en route* Smith & Co. becomes insolvent. Brown & Co. may notify the carrier not to deliver the goods to the consignee. But if Smith & Co. had previously assigned the bill of lading to a *bona fide* purchaser Brown & Co. would have no right to stop delivery.

493. Statute of Limitations.—The meaning of "Statute of Limitations" is that legal rights should be asserted or enforced within a certain time, and if not so asserted within a stated time the right to enforce is lost. When the time is past in which an action may be instituted the debt or other legal rights are said to be "outlawed" or "barred by Statute of Limitations." In Maryland, for instance, the Statute of Limitations for all contracts for the payment of money is three years. That is, if the debt be not collected within three years after it is due it will be outlawed and the debtor will no longer be under legal obligation to pay his creditor.

The time allowed a creditor to recover from his debtor varies in the different States, as it is a statutory regulation. We, therefore, submit the following

TABLE OF LIMITATIONS.

	Open Accounts.	Written Contracts.	Judgm'ts.		Open Accounts.	Written Contracts.	Judgm'ts.
Alabama	3	6	20	Nebraska	4	5	5
Arizona	3	5	5	Nevada	2	4	5
Arkansas	3	5	10	New Hampshire	6	6	20
California	2	4	5	New Jersey	6	6	20
Colorado	6	6	6	New Mexico	4	6	7
Connecticut	6	6	..	New York	6	6	20
Delaware	3	6	20	North Carolina	3	3	10
District of Columbia	3	3	..	North Dakota	6	6	20
Florida	4	5	20	Ohio	6	15	15
Georgia	4	6	10	Oklahoma	3	5	5
Idaho	4	5	6	Oregon	6	6	10
Illinois	5	10	20	Pennsylvania	6	6	20
Indiana	6	10	20	Rhode Island	6	6	20
Iowa	5	10	20	South Carolina	6	6	20
Kansas	3	5	5	South Dakota	6	6	20
Kentucky	2	5	15	Tennessee	6	6	10
Louisiana	3	5	10	Texas	2	4	10
Maine	6	6	20	Utah	2	4	5
Maryland	3	3	10	Vermont	6	14	8
Massachusetts	6	6	20	Virginia	5	5	10
Michigan	6	6	10	Washington	3	6	6
Minnesota	6	6	10	West Virginia	5	10	10
Mississippi	2	6	7	Wisconsin	6	6	20
Missouri	5	10	20	Wyoming	5	5	5
Montana	5	8	10				

[494]The statute begins to run on drafts and notes the first day after maturity. To illustrate, suppose A gives his note to B, dated September 1, 1905, payable in one year. The note is due September 1, 1906. On September 1, 1906, the limitation begins to run, and if B does not bring his action to recover within three years from that time, i. e., September 1, 1909, his right to recover will be lost. [495]The maker of a note is not discharged from liability if the holder does not demand payment at maturity, but, as previously stated, an endorser is, because his liability is only conditional. If an endorser waives protest and notice, then his liability will continue to run for the same length of time as the maker's.

CASES.

(Give reasons for answers.)

76. A gives B his check on First National Bank. B presents the check to the bank and requests the bank to certify it, which the bank does. On the following day the bank fails. B seeks to hold A liable. Can he succeed?[482]

77. A wishes to borrow $1000 of the First National Bank. The bank declines to give him the money on his own paper. A thereupon draws a draft on B, who accepts for A's accommodation. A does not have the draft discounted, but at maturity brings suit against B, the acceptor, to recover the amount of the draft. Can he succeed?[487]

78. A gives his note to B in order that B might borrow money on it. B discounts the note at a bank. At maturity the bank brings an action against A for the sum secured on its face. Can the bank succeed?[487]

79. In the above case, to whom can A, the maker, look for reimbursement, should he be required to pay?[487]

80. C lost a note, which was made payable to his order and which had not been endorsed before it was lost. Can C recover of the maker without giving him a bond of indemnity?[489]

81. B's note, which was held by C, was destroyed by fire. C sues B to recover on the note, but refuses to give B a bond of indemnity. Can he succeed?[489]

82. B executed a note payable to C, or order. C endorsed the note in blank to D. D, through no fault of his, lost it. At maturity, D gives B a bond of indemity and recovers on the note. A *bona fide* holder of the note sues B, who sets up as his defense that the note having been paid, he is no longer liable. Is this a good defense?[490]

83. C, the holder of B's note, neglects to demand payment until one year after the maturity of the note. Is the maker still liable?[493]

84. A note dated January 1, 1905, payable in one year, is not presented for payment until February 1, 1908. Payment being refused, the holder notifies the endorsers. Are the endorsers and maker liable?[493]

QUESTIONS FOR REVIEW.

1. Define negotiable paper. 2. What is meant by non-negotiable paper? 3. How is non-negotiable paper assigned? 4. What are the rights of the assignee of non-negotiable paper? 5. What is the rule as to passing title to negotiable paper when the transferrer has no title him-

self? 6. Define a Bill of Exchange. 7. What is a promissory note? 8. How many parties to a draft? 9. How many parties to a check? 10. Who are the parties to a note? 11. What are the essential requisites of negotiability? 12. What is meant by giving commercial paper as escrow? 13. What effect have additional stipulations on the negotiability of commercial paper? 14. Are notes which contain additional stipulations good contracts as between the immediate parties? 15. What is meant by remote parties? 16. May an endorsee have a better title than an endorser? 17. What is a judgment note? 18. Define collateral note. 19. Is the date of the note essential to its negotiability? 20. Who is the payee of commercial paper? 21. How must the amount be stated? 22. What do the expressions "value received" and "value received and charge to my account" mean? 23. Who is the drawee of a draft? 24. What is meant by days of grace? 25. How does the drawee fasten his liability on a draft? 26. Is a verbal acceptance binding? 27. May the acceptance be made on a separate paper? 28. When may the acceptance be made? 29. What is a general acceptance? 30. Define qualified acceptance. 31. What is the effect of a qualified acceptance on the liability of the drawer? 32. Is the drawer still liable after a general acceptance by the drawee? 33. What is an endorsement? 34. How many kinds of endorsements? 35. What is a blank endorsement? 36. How may paper be transferred when endorsed in blank? 37. What is a full endorsement? 38. May the holder change a blank endorsement to one in full? 39. What is a qualified endorsement? 40. Define conditional endorsement. 41. What is the effect of a restrictive endorsement? 42. If a party puts his name on the back of a note, when will he be considered a surety? 43. When maker? 44. When guarantor? 45. State the drawee's liability as to the drawer. 46. What is the drawee's liability as to the holder? 47. What is the acceptor's liability? 48. What does the acceptor conclusively admit and warrant to a *bona fide* holder? 49. Define drawer's liability. 50. What is an endorsee's liability? 51. What does an endorser conclusively admit and warrant to a *bona fide* holder? 52. State the liability of an endorser without recourse. 53. What steps must be taken by the holder in order to make absolute the liability of a drawer or endorser? 54. When must a draft be presented to the drawee? 55. What is meant by demand for payment? 56. What is meant by protesting commercial paper? 57. What does protest comprise? 58. Who may give the notice of dishonor? 59. To whom should notice of dishonor be given? 60. When must the notice of dishonor be given? 61. What must the notice contain? 62. Why are notes, checks, drafts, etc., protested when the law does not require it? 63. What is meant by a waiver of notice and protest? 64. What constitutes a *bona fide* holder? 65. What are the defenses that may be set up against a *bona fide* holder and defeat his rights to recover? 66. What is a check? 67. State the differences between a check and a draft? 68. What is a certified check? 69. What are the effects of certification? 70. Define Certificate of Deposit. 71. What is meant by accommodation paper? 72. Can the owner of lost paper recover from the parties primarily liable? 73. Can title to commercial paper be made through forged signatures? 74. What is meant by Statute of Limitations?

ANALYTICAL OUTLINE OF AGENCY.

AGENCY.

1. Agency defined.
2. Agency a form of employment.
3. Who are principals.
4. Who are agents.
5. Capacity of parties
   1. Who may be principals.
   2. Who may be agents.
6. How agents may be appointed
   1. Conduct.
   2. Verbally.
   3. Written instrument
      1. Without seal.
      2. Under seal.
7. Powers of agents.
8. Classes
   1. General.—Authority of.
   2. Special.—Authority of.
9. Principal's
   1. Liability
      1. To third persons
         1. On contracts
            1. General agent
            2. Special agent.
         2. For torts
            1. Negligence.
            2. Willful acts.
            3. Fraud.
            4. Criminal acts.
      2. To agent
         1. Compensation.
         2. Advances.
      3. Broker's rights.
   2. Rights against agent.
   3. Rights against third persons
10. Agent's
    1. Duties and liabilities to his principal
       1. General liability.
       2. Defenses of agent against principals.
       3. Good faith.
       4. Follow instructions.
       5. Skill and diligence.
       6. Depositing money in principal's name.
       7. Mixing property.
       8. Keeping accounts.
    2. Liability to third persons.
       1. On contracts
          1. When an agent is not known to be such.
          2. Not known for whom he acts
          3. Exceeds his authority.
          4. By form of contract.
          5. Agrees to become so.
       2. For torts.
11. Termination
    1. Revocation of the principal.
    2. Renunciation by the agent.
    3. By lapse of time.
    4. Completion or extinction of subject matter.
    5. Insanity of principal or agent.
    6. Death of principal or agent.
    7. Bankruptcy of principal.

CHAPTER XXVIII.

AGENCY.

496. Agency Defined.—Agency is a legal relationship founded on a contract, express or implied, by means of which one party gives authority to another to carry on business for him. He who, being competent to do an act for his own benefit, or on his own account, employs another person to do it, is called the *Principal*, and he who is thus employed is called the *Agent*. The relation thus created is called an *Agency*. The law of agency, probably, enters into every business enterprise in the world. It is almost impossible to conceive the idea of a single person carrying on his business without some assistance. If assistants be employed to represent the principal there is then the relation of principal and agent.

497. Agency a Form of Employment.—Many of our writers on agency seem loth to recognize that agency is a form of employment. Yet in dealing with the principal's liability for the agent's torts they invariably introduce large selections from the law of master and servant. It is true that "employment" is a broader term than "agency," but in dealing with this aspect of the subject we use the term "employment" to mean employment for the purpose of bringing the employer into legal relations with a third party. The business of a corporation is entirely conducted by agents. Even the huckster and cobbler have their agents. The rules and principles of agency are not numerous nor in themselves complex, but difficulties often arise in their application which makes the subject quite technical and complicated.

498. Who Are Principals.—A principal is one who gives authority to another to do some act for him, or who adopts the unauthorized acts of another. A employs B as his solicitor. A is a principal and B an agent.

499. Who Are Agents.—An agent is one duly authorized to act on behalf of another, or one whose unauthorized acts have been duly ratified. From this definition it will be observed that whenever one person employs another to represent him, or ratifies the unauthorized act of another, the person so employed, or whose unauthorized acts are ratified, is an agent. If A, unknown to B, should buy a carload of watermelons for B, and the latter receive and pay for the same, A would be an agent, because B adopted A's unauthorized act.

CAPACITY OF PARTIES.

500. **Who May Be Principals.**—Everyone of full age and of sound mind may be a principal, unless laboring under some legal disability. A principal must be able to contract.

501. **Infants.**—Infants are generally incapable of appointing an agent. It has, however, been decided that an infant may appoint another to do an act which will be beneficial to him, but not to do an act which will be to his prejudice.

502. **Idiots and Lunatics.**—They are wholly incapable of appointing an agent, because they have no *contractual capacity.*

503. **Who May Be Agents.**—Any person, except a lunatic, idiot or child of very tender years, may be appointed an agent. An infant may act as an agent, because his act is not his own, but that of his principal. Therefore, if the principal have capacity to contract the agent need not have, because the acts performed by the agent are not in his name or on his account, but in the name or on account of his principal, who has contractual capacity.

504. **How Agents May Be Appointed.**—An agent may be appointed by conduct, verbally or by written instrument, sealed or unsealed. The relation between principal and agent originates in a contract; therefore, no one can be made the principal of another without his consent. Neither can a person become the agent of another without that other's consent, expressed or implied.

[505]A person may, however, ratify the unauthorized acts of another, thus creating the relation of principal and agent. The ratification must, to be valid, be with full knowledge by the principal of all the material facts in the case. A sent B money with which to purchase a lot on Charles street. B, believing a better investment could be made by purchasing a lot on Bolton street, so invested the money, and wrote A that "the property was purchased and payment made." A was sued for the balance of the purchase money, but refused payment, because he had not authorized the purchase of the lot on Bolton street, and that although he had ratified the purchase as represented to him, he was not bound by such ratification, because the agent did not purchase the property he was instructed to buy, and in making his report he concealed the fact that he had violated his instructions, and led him to believe the property on Charles street was purchased, so that the ratification was not made with full knowledge of all the material facts. A's defense is good. He need not pay the purchase money. Had the agent informed B that he had bought property on Bolton street, and the principal consented to such purchase, the principal would be bound, because of his ratification of the agent's acts, although they were unauthorized. The agent is liable to the principal for damages and a return of the money for violating his instructions.

506. **Appointment Under Seal.**—It is never necessary that the authority

given to the agent should be reduced to writing, signed and sealed by the principal, except where the thing to be done by the agent requires a sealed instrument. For instance, if A appoint B as his agent to sell and convey certain real estate belonging to A, then B, as he has a deed, which is a sealed instrument, to execute, must receive his authority under A's hand and seal. An appointment thus made is called "power of attorney;" that is, A gives B a power of attorney, which may be general in its nature, i. e., to do and perform every act requisite and necessary to be done in the principal's business, or limited, i. e., to do some special or particular thing.

Power of Attorney.

507. General Form.—For any specific act:

KNOW ALL MEN BY THESE PRESENTS, that I, J. H. Easterday of the City of Toledo, Ohio, do hereby appoint J. U. Dennis, of the City of Chicago, Ills., to be my agent and attorney for me and in my name, to (here insert the act or acts to be done by the attorney).

As witness my hand and seal this first day of September, in the year nineteen hundred and five

Test: C. L. Merriken. *J. H. Easterday.* [SEAL]

Power of Attorney.

508. Mercantile Agent.—To manage personal business:

KNOW ALL MEN BY THESE PRESENTS, that I, Willis Myers, of Boston, Mass., do hereby constitute, nominate and appoint Philip Maguire, of Boston, to be my true, sufficient and lawful attorney, for me in my name, place and stead, to ask, demand and sue for, recover and receive all sums of money which may be due to me from all persons and corporations whatsoever, and to give discharges thereof; to draw and accept drafts or bills of exchange in my name; to draw and sign all checks which, in his judgment, may be necessary for the transaction of my business upon the American National Bank of Boston, and to endorse all checks drawn to my order; to sell, transfer and assign all stocks which may be standing in my name; to receive all dividends now due, or which may become due, upon all stocks or securities held by me, and the interest upon my bonds, notes or other evidences of debt held by me, and to give receipts in my name.

As witness my hand and seal this first day of March, in the year nineteen hundred and six.

Test: H. M. Rowe. *Willis Myers.* [SEAL]

CHAPTER XXIX.

POWERS OF AGENTS.

509. Authority of Agents.—This question embraces the whole subject of the rights of principals against their agents, the rights of agents against their principals, the rights of third persons against principals, the rights of principals against third persons, and the rights of third persons against agents, and the rights of agents against third persons. The extent of an agent's authority and power depends upon the nature and character of the appointment, and whether he is a general or special agent. Hence, agents are thus divided into two classes, viz., 1. General; 2. Special.

510. Authority of General Agents.—A general agent has not only the authority conferred upon him by his principal, but all the powers that are usually exercised by agents in that particular line of business or employment. This class includes the great mass of commercial agents.

511. Authority of Special Agents.—A special agent is one who has only the authority committed to him by his principal. Persons dealing with this class of agents are put upon inquiry to know what their powers are. They are not clothed with any implied authority.

The distinction between a general and special agent is that the former, having a wider scope, both of duty and authority, represents his principal in all matters of a particular kind or growing out of a particular employment, and this may be in one or more places; while the latter is one whose authority is definitely limited, and whose duty is specified. A person who is authorized to execute all deeds, sign all contracts or purchase all goods required in a particular trade, business or employment is a general agent in that trade, business or employment. But a person authorized to execute a particular contract, or to purchase a particular parcel of goods is a special agent. But it is not, however, the doing of a particular thing that is the test whether or not a person be a special agent. A lawyer, employed to try a case, is a general agent, although employed for a particular purpose.

PRINCIPAL'S LIABILITY TO THIRD PERSONS.

512. On Contracts Made by General Agents. The general rule is that an agent, known to be such, and acting within the scope of his authority, and through a

known principal, binds that principal, and not himself. The acts of an agent, done within the scope of his employment, and within the limits of the authority which he possesses, are regarded as the acts of the principal, and not the acts of the agent. The agent, in this case, incurs no personal responsibility whatever.

[513]In case of a general agent, the principal will be bound, although the agent exceeds the authority given, so long as he does not go beyond the powers which are usual and customary in his business such as are exercised by other agents of his vocation. A, the manager of a branch of B & Co.'s shoe stores, is instructed not to warrant a certain case of shoes which the firm ships him. It has been the practice and custom to give a warranty with all shoes sold. A, contrary to the express instruction, warrants them. The firm is liable for the warranty so given. [514]A general agent's authority cannot be limited by private instructions. A person dealing with such an agent is not supposed to inquire if his power is limited. A dry goods firm instructs its general manager to purchase a certain lot of dry goods. The manager, instead, buys groceries and hardware. The firm would not be liable, because the agent did not keep within the scope of the business for which he was appointed. But had he bought dry goods, even a much larger amount than he was instructed to buy, the firm would be liable, because that would have been within the general scope of his employment.

515. On Contracts Made by Special Agents.—The principal is not liable on contracts made by a special agent if he in any way exceed the express authority given him. A special agent has no implied power like a general agent. Everyone dealing with such an agent is bound *at his peril* to ascertain the scope of his authority. A, the proprietor of a restaurant, because of the absence of B, who does the buying for the establishment, sends C, the waiter, to buy fifty watermelons, and instructs him not to pay more than twenty-five cents apiece. The waiter contracted, on behalf of his principal, to pay thirty cents apiece. The principal is not liable. He can justly refuse payment, because C was a special agent, and appointed to do a single thing in a certain way. He, having exceeded his instructions, binds no one but himself. He who deals with a special agent does so at his own risk. If, in the above case, B had received the same instructions as C, and had bought the melons, agreeing to pay thirty cents or even more, A would be bound, because B is a general agent, he doing the buying for the restaurant.

516. Liability of Undisclosed Principal.—An undisclosed principal is bound by the acts of his agent when he is discovered, and so he may at any time make himself known and obtain the fruits of his agent's work. [517]If a third party has dealt with an agent, supposing him to be principal, then such third party is entitled to his set-off and other equities as against the principal, for the principal must run these risks, since it is he who puts the agent forward to be trusted

WRONGFUL ACTS OF AGENTS.

518. General Liability.—Hitherto we have only considered the responsibility of the principal to third parties on contracts made by their agents. But he is also liable, and that to a considerable extent, for wrongs committed by his agent while engaged in his services. He will be so in every instance in which he has expressly commanded the wrong to be done, or gives orders which can be executed only by its commission.

519. Negligence of Agent.—The principal is liable to third persons for negligence and omission of duty of the agent, if the same be committed in the regular course of his employment and within the scope of his authority, although he did not authorize or know of such misconduct, or even though he forbade it. A, the proprietor of a blacksmith shop, instructed B, one of his servants, to shoe a customer's horse. The servant, by his carelessness and neglect in properly shoeing the horse, made him lame. The customer sues A to recover damages. He can succeed, for A is liable. Again, suppose a coachman drives his employer's carriage so unskillfully that he runs into C's carriage and injures the occupant and also demolishes the carriage. The principal or employer will be liable to C for damages because of the above rule.

520. Willful Acts of Agents.—Though the employer is answerable for the negligence of his agent while engaged in his services, he is not liable for his willful and malicious acts, unless done in the course of his employment. Thus, "if a servant driving a carriage, in order to effect some purpose of his own, wantonly strike the horses of another person and produces an accident, the master is not liable, though if, intending to execute his master's orders, he strike, but injudiciously and to extricate himself from a difficulty, that will be negligent and careless conduct, for which the master will be liable." Suppose a conductor of a street car, in ejecting a passenger because he would not pay his fare, strikes the passenger a blow which was wholly unnecessary, and through the force of the blow the passenger was severely injured, the company would be liable in such a case for the injury sustained, because the act was done in the course of the conductor's employment.

[521]The student should draw the distinction between the case just illustrated and the following: If the passenger, having paid his fare, and otherwise properly conducting himself, were assaulted by the conductor, simply that he might have revenge for some latent spite which he had against the passenger, the company would not be liable, because the act done was not in pursuance of the conductor's employment.

522. Fraud of Agents. A principal is usually held to be liable to third persons for the deliberate fraud of his agent, committed in the execution of his

employment. A clerk in a jewelry store represents an imitation of a diamond to be genuine. The customer, relying upon the representation, buys the jewel. Upon discovering the fraud practiced on him, the customer returns the false jewel, and demands a return of the money. B, the proprietor, claims he knew nothing about the fraud, was innocent of any knowledge that had been practiced, and, therefore, was not liable. But the proprietor is liable, and can be made to return the money. The reason for this given by Lord Chief Justice Holt appears to be a sensible one. "Seeing," says he, "that one of two innocent persons must be the loser by the deceit, it is more reasonable that he who employs and confides in the deceiver should be the loser than a stranger." This maxim applies to cases of fraud only.

523. **Criminal Acts of Agents.**—The principal is not generally criminally liable for acts of his agent unless he commanded them. This means that he cannot be arrested, fined, imprisoned or prosecuted for the criminal acts of his agent. A sends B, his agent, to collect a bill of C. Payment being refused, B and C, get into an altercation. In a fit of anger, B, the agent, kills C. A is in no way liable to be prosecuted for his agent's act. However, in case of an indictment for a libel published in a newspaper, it was held that the person who furnished the means for carrying on and derived the profits from such newspaper was criminally answerable for what appeared therein, though it could not be shown that he was concerned in the individual publication.

PRINCIPAL'S LIABILITY TO AGENT.

524. **Compensation.**—The chief right of the agent is to receive his remuneration or commission, the amount of which is fixed by contract between him and his employer, or by usage of trade in like cases. But no person can recover compensation if the services were rendered without request, expressed or implied. He may, however, be deprived of it in several ways, which will be noticed when we come to speak of the agent's duties.

525. If an agent do an act which is illegal, although authorized to do so by his principal, he cannot recover any compensation. A certain gambling-house employed B to sell policy slips, which is forbidden by statute. At the end of six months B is discharged, the firm owing him at that time $300 as salary due and unpaid. B sues to recover. He cannot succeed, for he was doing that which the law prohibits.

526. **Advances.**—Besides commission, he has a right to charge his principal with all advances and disbursements made by him in the regular course of his employment, when such are necessary and proper, i. e., storage, drayage, etc., for there is an implied request from the principal to make such disbursements.

527. **Broker's Rights to Compensation.**—If an agent disclose that property

is for sale, and introduce negotiations between the owner and the purchaser which result in a sale, then the agent is entitled to compensation. All that the agent need do is to bring the owner and purchaser together. If the sale can be referred to the instrumentality of the broker, as through advertisement, the broker can recover his commission. But the mere production of a party who enters into a contract to buy is not sufficient to entitle the agent to compensation, as that party may break his contract. The sale must be actually consummated, but if, by the fault of the owner, it be not consummated, then the broker is entitled to his commission.

528. Rights of Principal Against Agent.—The right of the principal against his agent depends largely on the instructions which were given in the appointment. Be those what they may, it is his duty to carry them into effect to the very letter. He can require the agent to render an account at any time in relation to the agency.

[529]The relation of the principal and agent is a fiduciary one. A principal who intrusts an agent to bind him trusts in that agent's skill, intelligence and experience, and, above all, in his honesty.

[530]An agent must exercise reasonable skill and ordinary diligence in the execution of the trust imposed upon him, and for injuries to his principal, caused by the want of such skill and want of ordinary care, he will be liable. Thus A, the holder of a note made by B and endorsed by C, leaves it at a bank for collection. The bank, through its own neglect, failed to present the note at maturity, thus releasing the endorser. The maker, B, is insolvent. The bank will have to make good the loss to A, for it was through its own want of reasonable diligence that C, from whom it might have been collected, was discharged from liability.

531. Rights of Principal Against Third Persons.—Whatever an agent does within the scope of his authority is, in legal effect, the act of the principal, who is entitled to all the advantages and benefits arising from the acts and contracts of such agent. He is also entitled to all the remedies which he would have were the contracts made by him personally. [532]If the principal give notice to third parties not to pay money to an agent unless agent has a lien or some superior right to the money, the amount of any payment to the agent after such notice may be recovered by the principal from the debtor, thus requiring him to make payment the second time.

CASES.

(Give reasons for answers.)

1. A, who represented himself as an agent to secure subscribers for a monthly magazine, obtained twenty-five subscribers, also collected the subscription price. The subscribers, in answer to a complaint, received word from the publishers that A was not authorized to represent them, and that they would not ratify his unauthorized acts. The subscribers sued the publishers

to compel them to send the magazine for one year as per agreement made with A. Can they succeed?[504]

2. B, a boy fourteen years of age, who was employed in A's office, was instructed to negotiate for the purchase of 500 bales of cotton at a certain price. The boy made the purchase, but A sought to avoid the contract because of a decline in the price of cotton. When A was sued he set up as a defense that the boy, being a minor, had no capacity to contract. Is his defense good?[503]

3. A of Washington wrote to a real estate agent of Chicago to sell the house and lot No. 260 Rush street. The only authority possessed by the real estate agent to negotiate the sale was the letter thus written. The property was sold and a deed executed by the agent in the name of his principal. Is the sale valid?[506]

4. A authorized his broker to purchase 10,000 bushels of wheat, and instructed him to buy only for cash. The broker bought the wheat to be paid on demand at the current price at the time of demand. Is the principal liable on the contract?[513]

5. A authorized B, his coachman, to purchase a carriage, and instructed him not to pay more than $150. B contracted for the carriage for $175. A was sued for the purchase price. Is he liable?[515]

6. It is the custom in New York City and other cities for the theaters to make certain reductions in cases of a sale of 70 or 100 seats to one person, club or organization. Because of the heavy expenses in securing a certain opera company, the managers of the Academy of Music instructed their ticket agent to allow no rebate. Contrary to their instructions, the agent sold to B, the secretary of a choral society, 150 $1.50 seats at $1. Are the managers bound by the sale thus made contrary to their instructions?[513]

7. An action was brought by A against B to recover compensation for injuries sustained by him through the alleged negligent driving of B's servant. The facts were that while A was crossing a certain street in New York City B's servant so negligently and improperly drove the horse and cart of his master that the horse and cart ran against and struck A with great violence and threw him down, by reason whereof he was much hurt and injured. Can A succeed?[519]

8. B, a servant of A's, willfully drove A's carriage against C's, whereby C was thrown from his buggy and greatly hurt. A was not present, nor did he in any manner direct or assent to the act of his servant. C sues A to recover damages caused by his servant. Can he succeed?[520]

9. An action was brought by B against A & Co. in a sale by them to B of a large quantity of cheese which was represented to be of good quality. The facts were that A & Co. employed C to manufacture cheese for them at a specified sum per hundred pounds. The cheese was made from milk furnished by A & Co. and their associates. C in order that he might increase the output, thereby increasing his income, obtained daily a large quantity of sour curd, which would not make good cheese, and worked it up by placing it in the center of the cheese made from sweet curd. This greatly impaired its value. A & Co. were innocent of the acts of their agent. On these facts, should B recover?[522]

10. A, the proprietor of a tobacco store, employs B to sell cigars, etc., on Sunday, which the law prohibits. After working four Sundays, B demands payment for his services, which is refused. Can B recover?[525]

11. A, who represented himself as a skillful and experienced gardener, was employed by B to work in his garden cultivating some small plants. The plants died. On an examination as to the cause it was found that A had cultivated the soil too closely to the roots, and in many cases had even cut them off. B sued A to recover damages. Can he succeed?[530]

12. A notified B not to pay the money to his agent for the corn which A's agent had sold to B. Heedless of the notice, B paid the agent, because he had previously transacted his business with him. The agent absconds with the money, and A sues B to recover. Should he succeed?[532]

CHAPTER XXX.

DUTIES AND LIABILITIES OF AGENTS.

533. General Liability.—Whenever an agent violates his duties or obligations to his principal, whether it be by exceeding his authority or by positive misconduct, or by mere negligence or omission in the proper functions of his agency, or in any other manner, and any loss or damage thereby falls on his principal, he is responsible therefor, and bound to make a full indemnity. The loss or damage need not be directly or immediately caused by the act which is done. Thus, if an agent should knowingly deposit goods in an improper place, by which they are destroyed by fire he will be responsible for the loss, although the loss is not the direct consequence of his negligence, but of the fire; yet the loss would not have occurred except from such negligence. So, if an agent, who is bound to procure insurance for his principal, neglect to do so, and a loss occurs to his principal from a peril ordinarily insured against, the agent will be bound to pay the principal the full amount of the loss occasioned by his negligence.

534. Specific Duties.—The law makes no distinction between the duties and liabilities of general and special agents. For a violation of the trust conferred upon them they are alike liable to their principals. We shall consider the following specifically-named duties:

1. Good faith.
2. Follow instructions.
3. Skill and diligence.
4. Depositing money in principal's name.
5. Mixing property.

535. Good Faith.—Because of the confidence which has been reposed in the agent, he is required to exercise the utmost good faith. The law will not even allow an agent to put himself in a place of temptation. Thus, an agent, employed to sell, is not allowed to be the purchaser, unless he make known to his principal that he intends to become such. The principal can even then refuse to ratify it. Neither can an agent, employed to purchase, be the seller, unless there was an

understanding to that effect. A authorized B, his broker, to buy 1000 shares of B. & O. R. R. stocks. B sold his own stocks to A. The sale was not binding on A, although there was no fraud, and even though the price was below the market quotations. [536]Neither can a person act as agent for two principals in the same transaction. He cannot serve two masters. For example, A authorized B to purchase 500 shares of Chicago gas stock. C appointed B as his agent to sell a like number of shares of the same stock. B's duty to A is to buy the stocks for the lowest price possible, and his duty to C is to sell the stocks for the highest price possible. It is evident that he cannot act for the best interests of both A and C. If he favor one it is at the loss and expense of the other. Therefore, if B sold C's stock to A, neither A nor C would be bound by the contract. B, the agent, would also forfeit his commission. A contract thus made is not void, but voidable by either party. An agent may, however, represent both buyer and seller in the same transaction when he acts with full information and knowledge of both principals and with their consent.

537. **Follow Instructions.**—When an agent has received instructions it is his duty to adhere faithfully to those instructions. If he do not, and a loss occurs, he will be personally liable to his principal as well as forfeit his compensation. A shipped B, to be sold for the former, 5000 head of cattle, and instructed B not to hold the cattle longer than November 1. At that time, the market being dull, B did not sell, but held the cattle a few days longer, during which time there was still a further decline in prices. B will be personally liable for the loss A sustained which would be the difference in the price of cattle on November 1 and the day on which they were sold, as well as losing his commission for disobeying instructions. If the agent have no specific instructions, he must follow the accustomed course of business.

538. **Skill and Diligence.**— As previously stated, an agent is bound to exercise ordinary skill and diligence. If he do not, and a damage is sustained thereby the principal need not pay him for his services.

539. **Depositing Money in Principal's Name.**—It is the duty of the agent to deposit money belonging to his principal in his principal's name. If he do not do so he will be personally liable for any loss, i. e., insolvency of bank. A, having money belonging to his principal, deposited the money in his own name in the First National Bank, which was reputed to be the best in the city. The bank failed. The agent must make good the loss to his principal. So, also, if an agent mix the money of his principal with his own, and the same is lost by embezzlement, the agent is liable to his principal.

540. **Mixing Property.**—It is also the duty of the agent to keep his principal's property separate from all others, so that it may be identified or distinguished at

any time. Should he disregard this rule the property so mixed shall become the principal's. B shipped to a commission merchant to be sold on his own account 100 bushels of potatoes, which were of an extra fine quality. The commission merchant mixed about seventy-five bushels of his own, which were small and inferior, with B's, in order that he might sell his to a better advantage. The potatoes, 175 bushels, belong to B, and he can claim the proceeds when they are sold. The reason for this is that it acts as a punishment for his dishonesty. This practice of mixing property prevails quite extensively among commission merchants. But it is difficult to prove such charges against them unless a detective has been following the goods.

541. Keeping Accounts.—It is a very essential part of an agent's duties that he should keep a clear and accurate account of his principal's business and communicate the result from time to time to his employer. In stating this account the principal should be given credit for every increase made from his own property. Thus, an agent who has made interest upon his principal's money will be obliged to account for it. The agent must credit his principal with all money actually paid him, and with all losses incurred by his own negligence, or even through the imposition of a forger.

[542]If the agent clandestinely speculate with his principal's money or other property, whatever is gained thereby belongs to the principal. But if the agent lose in such a speculation the loss falls upon the agent. A, who was buying corn for B for speculation, bought a large quantity for himself at a very low price, and sold it at a profit without B's knowledge. A must account to B for all the profit.

543. Defenses of Agent Against Principal.—The principal will not be allowed to maintain any suit for redress against his agent if the subject-matter of the agency is an illegal or an immoral transaction, or is founded in fraud or against public policy. Thus, if goods are intrusted to an agent to be smuggled into a country, and sold there against its laws, the principal can neither recover the goods nor maintain a suit for the proceeds of the goods if sold. In such cases the right to recover is necessarily founded upon a contract for illegal purposes. But where the recovery from an agent is not based upon an illegal contract, but upon a new collateral undertaking not illegal, although resulting from an illegal contract, it may be recovered. Thus, if an agent has received money from a third person for his principal, which money accrued from an illegal transaction between the principal and such third person, who had no connection with the agent, the principal may recover it from his agent, for as between them the receipt of the money for the principal is upon a legal contract, although the money itself accrued under a former illegal transaction.

LIABILITY OF AGENTS TO THIRD PERSONS.

544. On Contracts.—As previously stated, whatever an agent does within the scope of his employment binds his principal, and not himself, but an agent may make himself liable on contracts that he makes for another in any of the following ways:

1. When an agent is not known to be such.
2. When an agent is known to be such, but not known for whom he acts.
3. When an agent exceeds his authority.
4. By the form of contract.
5. Expressly agrees to become so.

545. When an Agent Is Not Known to Be Such.—A person may be acting entirely under the instructions and for the benefit of another party, and yet he may not be known to be acting for another. In such a case the agent incurs the responsibility of a principal. He subjects himself to personal liability, and this is true even after the principal has been disclosed at any subsequent stage of the transaction, unless the third party has lost his right to hold the agent by electing to hold the principal. A, acting as agent for B in buying grain, purchased a large quantity in his own name. B furnished A money with which to make a part payment. Subsequently B failed in business, and A was sued for the balance of the purchase money. A is personally liable and must settle the account, although he had no interest in the grain and no benefit from the transaction except to receive his commission.

546. When an Agent Is Known to Be Such, but it Is Not Known for Whom He Acts.—One may constitute another his agent without disclosing himself in the transaction. He may use the agent as a cloak or mask to conceal his actions. A third person dealing with such an agent, and suffering any injury from the acts of the agent, clearly has a right to look to some one for satisfaction, and in this case the agent is personally liable, subject, however, to the right of a third party to hold the principal, should he afterwards be disclosed.

547. When an Agent Exceeds His Authority.—If an agent make contracts which are not within the scope of his employment he is personally liable for such contracts. A authorized B to purchase 1000 bushels of peaches on thirty days' credit. B purchased 1000 bushels of apples instead; or suppose he purchased 1500 bushels of peaches. A can repudiate the contract or purchase, and thereby make B personally liable to the third person for the purchase money.

548. By the Form of Contract.—An agent may make himself responsible by the form of the contract. If an agent sign a contract in his own name, as, for example, he gives a promissory note with his own name signed thus, "B, agent," he technically binds himself. [549]It is a general rule that a written instrument

must purport on its face to be the act of the principal. The usual and most reliable forms are, "A (principal) by B (agent)," or "A, by his attorney, B," or "A (agent) for B (principal."

[550]It is of the utmost importance for agents to take care that they do not bind themselves, and this can usually be avoided by doing that which every agent should do i. e., transacting the business of the agency in the name of the principal.

551. **Expressly Agrees to Become So.**—The agent will be personally liable whenever he expressly or impliedly undertakes to become so. Thus, if an agent should buy goods for his principal, and by a written memorandum should acknowledge the purchase was for his principal, and should promise to pay for them, he would be personally liable. So, if an agent selling goods should make out the bill for the goods as bought of him, he would be personally liable for a failure to deliver the goods. And so if an agent should retain an attorney for his principal, and should promise to pay him his fee, he would be personally liable.

552. **Agent's Liability for Torts.**—As we have previously stated, the principal is liable to third persons for misfeasances, negligences and omissions of duty of his agent, leaving him to his remedy against his agent in all cases where the tort is of such a nature as to entitle him to compensation. The agent is also personally liable to third persons for his own *misfeasances* or *positive wrongs*, but he is not in general liable to third persons for his own *nonfeasances* or *omissions of duty* in the course of his employment. His liability in these latter cases is solely to his principal.

[553]In all cases agents are liable to third persons for their own misfeasances and positive wrongs. And it makes no difference whether he did the wrong intentionally, ignorantly or by authority of his principal, for the principal could not confer on him any authority to commit a wrong upon the rights or property of another. In such cases the agent is not liable because he is an agent, but because he is a wrongdoer.

CHAPTER XXXI.

TERMINATION OF AGENCY.

554. **How Terminated.**—Our last inquiry under this subject is, how the agent's power to bind his principal may be determined or brought to an end. It may be terminated in any one of the following ways:

1. Revocation by the principal.
2. Renunciation by the agent.

3. By lapse of time.
4. Completion or extinction of the subject-matter.
5. Insanity of principal or agent.
6. Death of principal or agent.
7. Bankruptcy of principal.

555. **Revocation.**—The time when and manner in which an agency may be terminated depends upon the nature of the agency itself. As the authority is conferred on the agent by the principal, and is to be executed for his own purpose and benefits, he has a right to determine or revoke the authority thus given to his agent at his own pleasure. The agent cannot insist upon acting when the principal has withdrawn his confidence and no longer desires his aid.

556. If the agent have an interest in the subject-matter, or has given a valuable consideration for the appointment, the principal cannot revoke. Suppose A authorized B to collect certain debts, and to reimburse himself out of the collection for money which B had paid for A. A cannot revoke the agency until B has collected a sufficient amount to satisfy his claim.

557. **Renunciation.**—The agent may terminate the relation by renunciation. But if the agency were founded on a valuable consideration, or has been partially executed, the agent, by renunciation, will be liable for damages. A corporation employed A & Co., for a consideration of $1000, to place their bonds upon the market. A & Co., finding the task more difficult than they expected, notified the corporation that they would no longer endeavor to carry out their contract. A & Co. are liable to the corporation for damages for their renunciation.

558. **By Lapse of Time.**—If an agent be appointed to do a particular act, or for a definite period of time, the relation of principal and agent terminates on the completion of the act or expiration of the time. A, who was about to depart on a voyage, appointed B to manage his affairs until he returned home. On the return of A the agency terminates by its own limitation.

559. **Completion or Extinction of Subject-Matter.**—A & Co. appoint B to sell a cargo of bananas of a certain steamer which is expected to arrive in a few days. When the sale is completed the agency has its natural termination. B cannot bind A & Co. in any other contracts. So, also, if the steamer were shipwrecked, and the cargo lost, the agency would be at an end, because of the extinction of the subject-matter, the bananas.

560. **Insanity.**—Insanity of the principal or agent will terminate the agency. In general, anything which incapacitates either of the parties from performing the duties incident to the agency will terminate it.

561. **Death.**—As the agent receives his authority to act from his principal, the authority must necessarily cease at his (the principal's) death, for "as a dead man can do nothing, so he can authorize nothing."

[562]If the agent have an interest in the subject-matter of the agency, the death of the principal will not terminate the agency. For example, A lends money to B, in consideration for which loan B gives A power of attorney to collect some debts due B in settlement for the loan. A's agency would then be coupled with such an interest as would continue it until completed, even though it be after B's death. When an agent has only an interest in the execution of the power, the agency will be revoked by the death of the principal. Thus, A gave a bond to B to be delivered to C after A's death. Held, that B could not deliver the bond to C, since the death of A revoked the agency. [563]The death of an agent necessarily terminates the agency.

564. Bankruptcy of Principal.—Bankruptcy is the state of a man whose business is stopped and broken up because he is insolvent and utterly incapable of carrying it on. [565]When a principal becomes bankrupt he loses control of his property, and as he can no longer manage and control it, neither can one whom he has appointed to represent him; therefore, bankruptcy terminates the agency.

566. When Revocation Takes Effect.—A revocation becomes operative as to the agent from the time it is actually made known to him. But as to third persons dealing in good faith with one who was duly authorized to act as agent, the revocation will not affect the dealings of such persons until notice is given them. An action was brought by A against a wholesale house on a contract made by a drummer representing such house. The company claimed they were not responsible, because the contract was made subsequent to the discharge of the drummer. A claimed that he had received no notice whatever of the said discharge. The company must fulfill the contract, because of the rule as above stated.

CASES.

(Give reasons for answers.)

13. A appointed B his agent to purchase 500 tons of hay. C put his hay on the market in charge of B, who sold it to A. C sued A for damages, because the latter refused to perform his part of the contract made by his agent and within the scope of his employment. Can C, who proved that no fraud was practiced, succeed?[535]

14. A instructed B to sell his goods for cash only. It was customary, however, to sell that particular kind of goods on sixty days' time. B sold the goods to D on credit. D becomes insolvent, and A sues B to compel him to make good the loss. Should he succeed?[537]

15. B deposited in his own name money belonging to a secret society, of which he was treasurer. The bank failed. The society sued B to require him to make good the loss. B's defense is that the society, contrary to his wish, required him to make the deposit in that particular bank. Should the society succeed?[539]

16. A shipped B a carload of apples to be sold on his own account and risk. B mixed a carload of his with them in order that he might sell his own to a better advantage. A brought an action of replevin to recover both carloads. Can he succeed?[540]

17. A employed a stock broker to purchase for him a certain number of shares of B & O. R. R. stock. The stocks were bought. A becomes insolvent. The broker was sued for the purchase money. His defense is that he acted in the name of his principal and entirely within the scope of his authority. Is the broker liable?[545]

18. B, who was representing A, issued a note and signed it thus: "B, agent." B instead of A was sued as maker of the note. Is he liable?[548]

19. B was sued on a contract made for the purchase of 1000 boxes of oranges. B represented himself to be only an agent, acting for a fruit firm of Baltimore. The name of the firm was not disclosed. The orange-grower sold the fruit on the credit of the agent. Is B liable?[548]

20. A clerk of a dry goods store assaulted and beat a customer. Against whom can the customer bring an action for redress?[552]

21. A gave B a power of attorney to collect a debt and to reimburse himself for money which B had previously advanced for A. Can A terminate the agency before B has collected the debt?[556]

22. C, who was a tenant of A's, paid his monthly rent to B as he had previously done. At the time of payment A had discharged B, but C had not been notified of the fact. B absconds with the money, and A sues C for the rent. C sets up at his defense that he was justified in making payment to B, because he had not been informed of his discharge. Can A succeed?[566]

GENERAL REVIEW CASES.

(Give reasons for answers.)

1. The superintendent of a lumber-yard, in violation of his employer's directions, piled lumber on a sidewalk, where it fell and injured a person. Is the employer liable?

2. A sent a telegram to B for "two hand bouquets." The operator transmitted the message to B for "two hundred bouquets," whereby B sustained a loss. Is the telegraph company liable?

3. A, B and C made a note as follows: "We promise to pay D, or order, for the Boston Glass Manufactory," and signed their names, not saying as agents. To whom can D look for payment.

4. An agent was instructed by his principal to have his warehouse insured for $25,000. The agent neglected to do so. Subsequently, a fire damaged the warehouse. Is the agent liable to his principal for the loss sustained?

5. A party gave his coachman authority to sell his horse. The coachman sold the horse and warranted him to be sound. The horse proved to be unsound. Is the principal liable to the purchaser for the breach of warranty made by his coachman?

6. B employs A to manage his farm, and instructs him to hire as farm laborers only three men. A employs four. Is B liable for their wages?

7. An attorney was employed by A to examine the title of a piece of land. The attorney reported that the party offering to sell it had a perfect title, whereupon A purchased the property. It turned out that the seller had no title, which fact was discovered by an attorney of ordinary skill and intelligence. What are A's rights?

8. The bookkeeper of A & B accepted a draft drawn on the firm of A & B. The firm refuses payment, because they are not indebted to the drawer, and also on the ground that the bookkeeper had no authority to accept drafts. Is the firm bound by the act of the bookkeeper?

9. A real estate broker was authorized to sell certain property for A. The broker found a purchaser who was ready to comply with all the terms of the sale. A, however, refused to sell. The sale not being consummated, is the broker entitled to his commissions?

QUESTIONS FOR REVIEW.

1. Define agency. 2. Who are principals? 3. Who are agents? 4. Who may be principals? 5. Who may be agents? 6. How may agents be appointed? 7. Can a party be made a principal without his consent? 8. How may a person constitute another his agent in a transaction after the transaction is performed. 9. When must the appointment of an agent be under seal? 10. What is the authority of a general agent to bind his principal on contracts? 11. What is the difference in the power of a general and special agent? 12. To what extent may a general agent exceed his authority and still bind his principal? 13. Is an undisclosed principal ever liable for acts of his agent? 14. What is the general liability of a principal for the wrongful acts of his agent? 15. When is a principal liable to third persons for wilful and malicious acts of his agent? 16. Why is a principal liable for the fraud of his agent when he is innocent of the fraudulent practice? 17. What are the principal's liabilities to his agent? 18. What is meant by reasonable skill 19. What is meant by ordinary diligence? 20. What are the principal's rights against third persons? 21. What is the general liability of an agent? 22. When will not an agent be liable to his principal for violating his trust? 23. Why cannot an agent act for two principals to the same transactions at the same time? 24. What is the result if an agent mixes his property with that of his principal's? 25. How should an agent deposit his principal's money? 26. When will an agent be liable to third persons on contracts? 27. When cannot an agent collect compensation for his services? 28. How should an agent sign papers for his principal? 29. Is an agent liable to third persons for his torts? 30. What are the ways by which an agency is terminated? 31. When does the dissolution of an agency take effect as to third parties? 32. When may not a principal terminate an agency at his pleasure?

LEGAL MAXIMS.

1. No one is bound to do what is impossible.
2. No injury is done by things long acquiesced in.
3. Voluntary Outward acts indicate the inward intent.
4. An action is not given to one who is not injured.
5. The act of God does wrong to no one. (That is, no one is responsible in damages for inevitable accidents.)
6. Ignorance of the law is no excuse.
7. An act done by me against my will is not my act.
8. The proof lies upon him who affirms, not him who denies.
9. Let the purchaser beware.

10. That is certain which can be made certain.
11. No one is punished for his thoughts.
12. Confirmation supplies all defects, though that which has been done was not valid at the beginning.
13. When two parties are equally in fault the claimant is always at the disadvantage, and the party in possession has the better cause.
14. Debts follow the person of the debtor.
15. The law helps persons who are deceived, not those deceiving.
16. A man's house is his castle.
17. A gift is not presumed.
18. Equity looks upon that as done which ought to be done.
19. He who comes into court must come with clean hands.
20. Every man is presumed to intend the natural and probable consequences of his own voluntary acts.
21. A right of action cannot arise out of fraud.
22. A contract cannot arise out of an illegal act.
23. The law does not regard the fraction of a day.
24. No one shall be profited by his own wrongs.
25. Public rights are to be preferred to private rights.
26. A right cannot arise from a wrong.
27. Many promises lessen confidence.
28. No one can be punished twice for the same fault.
29. No man can contradict his own deed.
30. Things invalid from the beginning cannot be made valid by subsequent acts.
31. A thing void in the beginning does not become valid by lapse of time.
32. Ratification is equal to command.
33. A wrong is not done to one who knows and wills it.
34. If anything is due to the corporation it is not due to the individual members of it, nor do the members individually owe what the corporation owes.
35. When the law presumes the affirmative the negative is to be proven.

CHAPTER XXXII.

PARTNERSHIP.

- PARTNERSHIP
  - 1. Definition.
  - 2. How created
    - 1. Written—Form of Articles of Copartnership.
    - 2. Verbal.
    - 3. Implication
      - 1. Sharing of profits.
      - 2. True test.

567. **Definition.**—A partnership may be said to exist when two or more persons contribute their money, labor or skill, or all of them, to be employed jointly in some lawful commerce or business, the profits and losses to be divided in certain proportions. A partnership may exist for a single transaction or enterprise as well as for a continuous business, i. e., A and B form a partnership to build a

bridge or to engage in the general merchandise business for an unlimited or unspecified time.

568. **How Created.**—The partnership relation is a contractual one. It always results from a contract, but the contract need not be written or oral. Sometimes persons are made liable as partners who had not agreed to become such, but because they acted as partners toward third persons the law implies a partnership relation. When so created it is said to be by implication. From this it will be seen that the contract creating the partnership may be: 1. Written; 2. Oral; 3. Implied.

569. **Written.**—Whether the amount invested be large or small, the enterprise be simple or complicated, or the time of continuance be long or short, it is advisable, and probably most advantageous to all concerned, that the agreement be reduced to writing. By so doing there will be less liability of misunderstanding and disputes. When the contract is reduced to writing great care should be exercised to see that all the terms and conditions are fully and clearly expressed. The agreement thus written is called Articles of Co-partnership.

As between the parties themselves, a partnership agreement to buy and sell land is within the "Statute of Frauds," and must be in writing. No formal wording is required. On the following page we show a general form.

570 The agreement ought to be witnessed, as shown, though the law does not require it. The articles of co-partnership may be indefinitely varied by special provisions. Where the document is long, or the terms of the agreement complicated, legal assistance should be called in.

571. **Verbal.**—A partnership formed by spoken words is just as binding as if those words were reduced to writing. But the difficulty of proving what the terms of the agreement are, in case of a dispute, is an entirely different question, belonging to the law of evidence, which it is not our purpose to consider.

572. **Implication.**—Persons often engage in an enterprise without intending to form a partnership, but, nevertheless, are partners and liable to third persons as such, because they led third persons to believe they were jointly interested in the prosecution of the business, and having secured credit in that manner they will not be permitted to deny that they were partners. Suppose A and B agree to contribute each a sum of money for the purchase of a lot of goods, which they intend afterwards to divide. After the purchase of the goods, and before the division, they are joint owners thereof, and not partners. But if, instead of dividing, they sell them and divide the gain or profit, they then become partners because of a participation of the profits.

573. Form.

ARTICLES OF CO-PARTNERSHIP.

This agreement made this first day of March, in the year nineteen hundred and five, between H. M. Grayson and Earle Winthrop, both of the City of Buffalo and State of New York.

Whereas the said H. M. Grayson and Earle Winthrop have agreed to become partners in the general merchandise business in the said city for the term and under the stipulations hereinafter mentioned.

1. That they, the said H. M. Grayson and Earle Winthrop, shall be partners in the general merchandise business.

2. That the said partnership shall begin on the tenth day of March, in the year nineteen hundred and five, and shall continue for the term of five years, thence next ensuing; provided, that if either one of said partners shall be desirous to terminate or dissolve said partnership before the expiration of said term of five years, and shall give notice in writing of such their desire to the other at least ninety days prior to the following first day of January or July of either of the five years of said partnership, then and in that case the said partnership shall cease and terminate on said first day of January or July next after the expiration of said notice, or at such future day or time as shall be named therein.

3. That the firm name and style of said partnership shall be H. M. Grayson & Co., and that said trade or business shall be carried on under said firm name in such place of business in the City of Buffalo or elsewhere as the said partners shall from time to time mutually agree upon.

4. That the capital of said partnership shall consist of the sum of sixty-three thousand dollars ($63,000), which shall be brought in by the said partners in the following proportion, namely: the sum of thirty thousand dollars ($30,000) by the said H. M. Grayson, and the sum of thirty-three thousand dollars ($33,000) by the said Earle Winthrop.

5. That the said partners shall be entitled to share equally in the profits of said business, that is to say: each, the said H. M. Grayson and Earle Winthrop, shall be entitled to a one-half part thereof, and that all losses happening in the course of the said business shall be borne by them in the same proportion.

6. That said Grayson and said Winthrop may draw from the business, for their own use, not to exceed two hundred dollars ($200) in any one month. A full inventory and balance sheet shall be made up on the first day of March and on the same day of each year thereafter, and a record thereof kept. The said Grayson shall have charge of the financial affairs of the firm, and the said Winthrop shall have charge of the buying and selling.

7. That proper books of accounts shall be kept, and that true, plain, and correct entries shall be made by each of them therein of all things relating to the business of said partnership as are usually entered in such books of account, and that such books of account, together with all bonds, bills, specialties, insurance policies, notes, letters and other writings, which shall from time to time belong to or concern the said partnership, shall be kept in a depository where each of the said partners shall and may have free and equal access to the same, without the interruption of the other.

8. Upon the dissolution of the partnership from any cause except death, each partner shall have the privilege of submitting a bid for the entire business and good will, and the one making the higher offer shall succeed to the said business, and after the debts are paid the partner retiring shall receive such part of the balance of the amount bid by the partner succeeding to the business, as his interest in the business bears to the entire business.

In witness whereof, we hereunto subscribe our names and affix our seals this first day of March, 1905.

H. M. Grayson, [SEAL]

Test: A. H. Rivers. *Earle Winthrop.* [SEAL]

574. Sharing of Profits.—Although at common law sharing of the profits was the criterion to determine whether or not the parties were partners, it is no longer the true test. In 1860 the House of Lords of England for the first time decided that a participation of the profits of a business by agreement did not necessarily create a partnership, even as to third persons, although it affords a strong presumption thereof. The American courts have since followed this rule. [575]Consequently, as between the partners themselves and also as to third persons a mere sharing of the profits will not necessarily constitute a partnership. The party sharing the profits must have a right to the profits as principal in the joint business, or, as it is sometimes stated, "must be interested in the profits *as profits*, and not as a means of compensation for services." [576]As between the partners themselves, their intention, as gathered from the entire contract, governs.

Illustration.—A, a publisher, agrees to publish at his own expense a book written by B, and to pay B half the net profits. This does not constitute a partnership. B is not liable to a paper-maker for paper supplied to A for the general purpose of A's publishing business and used for publishing B's book.

577. True Test.—An agreement to share losses as well as profits is necessarily a partnership, and a party who has made such an agreement cannot be heard to say that he did not intend a partnership, with its ordinary legal consequences. A, having been a clerk in B's store, entered into a verbal agreement with him for a share of the profits and to bear the losses in the proportion of one-fifth to A and four-fifths to B. A alleged that the agreement was one of partnership, and claimed a dissolution and an account of assets. B denied the partnership, and alleged that A was only his manager. It was held that the agreement created the partnership relation, because there was an agreement to share losses as well as gains, and that A had a right to demand a dissolution and sale of the assets of the partnership. [578]An agreement to receive as compensation for services a portion of the net profits of a business, or a commission or percentage thereon in lieu of salary, will not make the recipient a partner. Thus, if A made a contract with B, a dry goods merchant, whereby the former was to take charge of the latter's store and to receive one-fourth of the profits as a compensation for his services, it would not constitute A and B partners.

CHAPTER XXXIII.

CLASSES OF PARTNERS ETC.

- PARTNERSHIP . . .
  - 1. Class of partners . . . . . 1. Ostensible. 2. Nominal. 3. Dormant. 4. Limited.
  - 2. Who may be partners.
  - 3. Duties of partners to each other . 1. Good faith. 2. Partners must account for profits. 3. Can have no adverse interest.
  - 4. To manage business.
  - 5. Compensation for services.
  - 6. Partnership name.

579. **Ostensible Partners.**—Partners may be: 1. Ostensible; 2. Nominal; 3. Dormant; 4. Limited. Ostensible or real partners are those whose names are made known and appear to the world as partners, and who in reality are such. Thus, both A and B, who are partners, take an active interest in conducting their business, and are known throughout the community to buy and sell in the firm name of A & B. Both A and B are ostensible partners.

580. **Nominal Partners.** Nominal partners are those who are held out to the world as partners, but who in reality are not such. They have no interest whatsoever in the business. Thus, if A told B that he was a partner of C, and B informed C of the statement, to which C made no reply, C would be liable as partner. D. J. Jerome, a shoe merchant, sold his entire business to J. U. Carver. The latter, in order to obtain the credit and standing with business men and the community in general which his predecessor had enjoyed, obtained permission from D. J. Jerome to use the firm name of Jerome & Carver. D. J. Jerome, however, had nothing to do with the business. J. U. Carver, the sole proprietor, bought a large stock of goods in the firm's name on credit. He subsequently failed. D. J. Jerome is liable for the debts thus contracted, and can be made to pay for the goods, because he held himself out to third persons as a partner, and the merchant who sold the goods believed him to be such, and extended the credit because of such belief. It would be detrimental to commerce to allow a wealthy man, by the loan of his name, to give a party a fictitious credit, and then refuse to satisfy creditors who had made their contracts upon the faith of his apparent responsibility.

581. Dormant Partners.—Dormant or silent partners are those whose names do not appear in the firm's name, and are not known by third parties to be in any way connected with the firm. They are, however, real partners, and partake of the profits and help to manage the business. But in order to screen themselves from liability in case of insolvency of the partnership their connection with the partnership is concealed. They can thus enjoy the fruits of a prosperous and successful business, and, should the business prove to be a failure, they can avoid liability for the partnership debts. A, B and C are partners. The firm name is A & B. C is not known to be a partner, but, in fact, is a real, active partner. The firm becomes financially embarrassed. C, whose connection with the firm is not known, can escape liability. But should C's connection with the firm be discovered he would be liable for the debts and contracts, for, by taking a part of the profits, he takes from the creditors a part of the fund which is their proper security for the payment of their debts.

582. Limited Partners.—Because of the common law liability of each partner to pay the whole of the partnership debts the general partnership is growing less popular, and is being supplanted by what is known as a limited partnership, because in such the partners are liable only for a limited amount. Such a partnership can be created by statute only, and a very close and strict compliance with the statute is necessary, because the limited liability of the partners is in derogation of the common law liability.

[583]In all the States statutes have been passed providing for the creation of limited partnerships. While the statutes differ somewhat in detail, the main provisions are the same, which are as follows:

1. There must be one or more general partners, who shall be responsible as such, and the number of special partners shall not exceed six.

2. A certificate is to be made and severally signed which shall contain names of partners, their places of residence and time when it is to commence and terminate.

3. The certificate must be acknowledged and recorded with the clerk of the Circuit or Superior Court.

4. The terms of the partnership are to be published at least six weeks in two newspapers.

5. Names of special partners are not to appear in the firm's name, nor are they permitted to transact any of the business. But if the word "limited" be used as a part of the firm's name, and if said word "limited," together with name of the special partner, and his designation, a "special partner," be placed upon all signs and be printed upon all bills, notes, checks, etc., used by the partnership, the special partner may take part in transacting the business.

6. The special partner must contribute cash only, which cannot be with-

drawn, and shall not be liable for the partnership debts beyond the amount so contributed by him.

[581]Parties wishing to form a limited partnership should consult an attorney, because of the numerous little details provided by the statute, which must be followed to the very letter. [585]The penalty for not complying strictly with the statutory provisions is that all the partners shall be considered general partners, and each liable for the full amount of the partnership debts.

586. Who May Be Partners.—Anyone who is capable of making a valid contract may be a partner. An infant, although he has no contractual capacity, may be a partner, for his contracts are not *void*, but merely *voidable;* that is, he may, when he becomes of age, either affirm or disaffirm the contracts and liabilities of the partnership. If the infant do not disaffirm within a reasonable time after he becomes of age the partnership contracts made during his minority, he will be personally liable the same as the other partners on all such partnership contracts. But if, when he reaches his majority, he disaffirm the partnership contracts made during his minority, he will not be liable. A and B are partners. B is a minor. They become heavily indebted to C. Seeing they cannot meet their obligations, B, just before his twenty-first birthday, withdraws from the firm and repudiates all the partnership contracts. C cannnot have recourse to B. His remedy is against A only, and should he fail to recover from A he will be the loser; although B, upon whose credit the goods were sold, may be a multi-millionaire, he is in no way liable for the partnership debts.

587. Duties of Partners to Each Other.—In the conduct of partners to each other the most scrupulous fidelity must be observed. The very foundation of a partnership is based upon confidence and belief in the entire integrity and honesty of each partner. [588]Therefore, if the partnership sustain any loss or injury through the fraud, gross negligence or wanton misconduct of one of the partners, he will be responsible to his co-partners therefor.

[589]Every partner must account to the firm for any benefit derived by him from a transaction concerning the partnership. This is a very important rule, and the following illustration will make it clearly understood: A, B, C and D are partners in the business of sugar refiners. C is the managing partner, and also does business separately, with the consent of the others, as a sugar dealer. He buys sugar on his own account, and sells it to the firm at a profit at the fair market price of the day, but without letting the other partners know that the sugar is his. The firm is entitled and can compel C to account to it for the profit made on every pound of sugar thus sold.

[590]Another elementary rule similar to the last is that no partner can, without the consent of the rest, be a member of another firm carrying on a like business in the same field of competition, and if the consent be given he is limited by its

terms. Suppose A & B are the proprietors of an evening paper, for which, by agreement, the types and plant of a morning paper owned by A, B & C are used. C may prevent or restrain A & B from first publishing in A & B's evening paper intelligence obtained by the agency of the morning paper and at the expense of A, B & C.

591. **To Manage the Business.**—If there be no agreement to the contrary, the powers of each partner to take part in the management of the firm's business are equal, although their shares may be unequal. Nothing is considered as so loudly calling for the interference of the court among partners as the improper exclusion of one of them by the others from taking part in the management of the partnership business.

592. **Compensation for Services.**—Unless the partnership agreement provide for it, partners are not permitted to charge the firm for services, no matter how unequal the services rendered or time devoted to the concern by each partner may be. Thus, A, B and C are partners. A devotes his entire time and attention to the business. B and C devote the most of their time to outside personal matters which in no way concern the partnership business. A cannot charge the firm for extra time devoted to the business unless it was so agreed.

593. **Partnership Name.**—The members of the firm may assume any name they desire for the transaction of their business. The names of all the partners need not appear in the firm's name; in fact, none of them need appear. Thus, A and B may go under the firm name of Z & Co., or A, B and C may form a partnership and style themselves A & Co., or A and B may form a partnership and use for their name A, B & Co. while in fact, there is no one who represents the "Co." In New York State, however, the word company cannot be used unless there is some one connected with the firm who is represented by the word "company."

CHAPTER XXXIV.

AUTHORITY OF PARTNERS.

AUTHORITY OF PARTNERS .....
1. Authority of each to bind all.
2. Drafts and notes.
3. Borrowing money.
4. Debts.
5. Declarations or admissions of a partner.
6. Trading and non-trading partnerships.
7. Use of seal.

594. **Authority of Each to Bind All.**—As a general rule, the firm is responsible for whatever is done by a partner within the scope of the partnership business. Each partner becomes an agent for the firm, with authority to do in the firm's

name whatever the firm can do. But this authority extends only to what comes fairly within the partnership design. It, therefore, follows that acts of a partner wholly unconnected with the business of a partnership do not bind the firm. A, B and C are in the hardware business. B, without the consent or knowledge of his partners, makes arrangements to open a bicycle department, which is to be a part of the business. He contracts in the name of the firm for the purchase of $6000 worth of wheels. The firm of A, B & C are not liable on the contract, because it relates to matters not within the scope of the partnership business. "Within the scope of the partnership business" means any acts or contracts which pertain in any way to carrying on the business for which the partnership was created. It matters not whether the acts or contracts be beneficial to the firm, so long as they relate to the business of the partnership. Thus A, B and C are partners in the dry goods business. A buys, without the consent or knowledge of B and C, a large stock of goods which are inferior to such as are handled by the firm, resulting in a heavy loss to them, as they can find no sale for the goods. Nevertheless, the firm must pay for the goods, as the act of A was within the range of the partnership business. And the fact that one partner ordinarily attends to one branch of the business does not prevent his binding the firm when acting out of his own department.

595. **Authority to Draw Drafts and Notes.**—A partner may draw, accept and endorse drafts and notes in the name of the firm so long as the same is done for purposes within the scope of the partnership business. But if a partner sign his own name to a note, instead of the firm's name, the partner thus signing will be alone liable, although the proceeds or benefits derived from the note were received and used by the firm. Thus, A borrowed for the use of the firm of A & B $5000, and signed the note in his own name. The money was used in the firm's business. A alone is liable, and not A & B.

596. **Restrictions on Authority.**—A restriction or regulation of the authority of each partner to draw drafts, checks, or issue notes, etc., by agreement among the partners does not in any way affect their liability to third persons, because such third persons are not presumed to know of any secret limitations. If, however, a third person can be charged with actual knowledge of such limitation, then the rule ceases, because the reason ceases. If A, B and C, who are partners, should agree that A was to sign all the checks issued by the firm, and B was to sign the notes and accept the drafts drawn on the firm, and C should, in violation of this agreement, issue checks and sign notes and accept drafts, such checks, notes and drafts would be valid and binding on the firm, provided third parties had no knowledge of the agreement of A, B and C. If they did know of the agreement the firm would not be liable.

597. **Endorsements for Accommodation.** A partner has no implied author-

ity to endorse, in the firm's name, commercial paper for the accommodation of or as a mere surety for another, except by special authority implied from the nature of the business or previous course of dealings. Such an endorsement, without authority, is nugatory.

598. Borrowing Money.—One partner may borrow money on the credit of the firm when it is necessary for the transaction of the partnership business in the usual way. One of the provisions in the articles of co-partnership of A, B and C is that no money shall be borrowed on the firm's paper. C, in violation of the agreement, borrowed $10,000 to be used in the partnership business. The firm is liable on the note.

599. Debts.—One partner may receive money or other property for debts due the firm, and such payment will extinguish the debt, even though the partner had no right, because of an agreement with his co-partners, to receive money and other property due the firm. A partner may also compromise with the debtors and creditors of the firm. But a partner cannot use partnership funds or property to pay his own personal debts without the consent of his co-partners. If property be thus used it may be recovered by the firm. Thus, A, B and C are partners. B gives to D the firm's note in settlement of a personal debt. The firm is not liable on the note. D's only recourse is to B, and not to A, B & C.

600. Declarations or Admissions of a Partner.—In general, the declarations or admissions of a partner in regard to matter within the scope of the partnership business bind the firm. For instance, if a debt be barred by statute of limitation, and a member of the firm should make a part payment of the debt, or promise to pay it, it would renew the debt, and the firm would be bound. [601]Notice by or to one partner is equivalent to notice by or to all. Thus, the firm of A, B & C endorsed a note to D. At maturity D notifies C of the dishonor of the note. The notice to C is sufficient to bind the firm of A, B & C, because notice to one is deemed notice to all.

602. Trading and Non-Trading Partnerships.—There are two classes of partnerships, viz., Commercial or Trading Partnerships and Non-Trading Partnerships. In these two classes the powers of each partner differ. In trading partnerships one partner has a right to borrow money on the credit of the firm, issue negotiable paper in the firm's name, and pledge property of the firm for the payment thereof, etc. This is not true of non-trading partnerships, and if a partner do any of the above-mentioned things in this class of partnership the firm cannot be held liable unless such act is in the usual course of the business.

603. Use of Seal.—A seal is a common law instrument, and was not known to the law merchant; therefore, one partner cannot bind the other by a contract under seal without express authority from that other partner. A partner who makes such a contract binds only himself.

CHAPTER XXXV.

LIABILITY OF PARTNERS TO THIRD PARTIES.

LIABILITY TO THIRD PARTIES .....
1. General rule.
2. Regulating and restricting duties and liabilities of partners.
3. Liability of incoming and retiring partners.
4. Fraud.
5. Two-fold responsibility.

604. General Rule.—The general rule which makes a principal liable for the acts of his agent applies with equal force to the liability of a partnership for the acts of a partner. In agency the rule is, so long as an agent keeps within the scope of his authority and the powers exercised by agents of his class he binds his principal, and not himself. In partnership, so long as a partner keeps within the scope of the partnership business he binds the firm, and not himself. The distinction is, in agency it is within the scope of authority; in partnership it is within the scope of the partnership business.

605. Regulating and Restricting Duties and Liabilities of Partners.—Partners may, by the contract creating the partnership, make any provision they choose as to the duties to be performed by each partner, as to who shall bear the losses, and how the debts of the firm are to be paid. The partnership agreement may provide that in case of losses it is to be borne by certain members of the firm, thus releasing others from liability. [606]While such an agreement is binding and enforceable between the partners themselves, yet it is of no effect whatsoever as to third persons who are or who may become creditors of the firm. Partners cannot, by agreement between themselves, abridge or limit their liability to third persons. Each partner is liable to pay the whole of the partnership debts. [607]But if third persons know that the partner's authority is limited, and that it does not extend to the particular contract in question, the firm will not be liable. The only way by which a partner can limit his liability to third persons is by an express agreement to that effect with such third person or by forming a limited partnership.

608. Liability of Incoming and Retiring Partners.—An incoming partner is not liable for the debts of the firm incurred before he became a member unless he

assumes them by agreement. But a retiring partner remains liable for the outstanding debts of the firm. For illustration: A, B and C are partners. Their liabilities amount to $40,000. C enters into an agreement with A and B whereby they agree to free C from all responsibility for the payment of the liabilities, and he withdraws from the firm, and the firm's name is changed to A & B. The creditors, notwithstanding this agreement, can hold C responsible. C's agreement with A and B does not affect in any way whatsoever the rights of their creditors to look to all who were partners at the time the debts were created for a full satisfaction of their claims.

609. Fraud.—One partner will be bound by the fraud of his co-partner in contracts relating to the affairs of the partnership made with innocent third persons. This doctrine proceeds upon the ground that where one of two innocent persons must suffer by the act of a third person, he shall suffer who has been the cause of the confidence and credit reposed in such third person. Thus, the firm is liable whether it be on a loan obtained by a partner for his expenses while engaged in the partnership business, or a purchase of goods such as the firm dealt in, although the partner after the purchase appropriated the goods to his own personal use.

610. Selling and Pledging Firm's Goods.—A partner may, in the absence of fraud, sell or pledge the entire personal assets of the partnership, but he cannot sell to himself. But it must be remembered that he who seeks to hold the firm for the fraud of a partner was not himself in any way connected with the fraud. If he were, or if circumstances were such as to induce a man of moderate discernment to believe that the partner with whom he contracted had no authority to bind the firm, it will not be liable. [611] If a partner sell the goods of the firm in his own name the partnership is bound by the sale and can sue the buyer for the price. But this right does not prevent the buyer from setting off any debt due to him by the single partner, for the existence of that debt may have been his inducement to deal with him.

612. Two-fold Responsibility for Debts.—In case of insolvency of the firm there is both a partnership and an individual responsibility to the creditors of the firm. In the application of the assets of the firm and the individual members thereof for the liabilities of the firm the following rule is applied: The partnership assets are first applied to partnership creditors. The assets of the individual members are next applied to the debts of the individual creditors, and whatever remains of the individual assets belongs to the partnership creditors. For illustration, A, B and C are partners. They become insolvent. The creditors of the firm can take all the partnership property, but they cannot take the property of A, B & C which they own in their individual capacity until the creditors' claims of each member of the firm are fully satisfied. If anything remain the creditors of the partnership can take it.

CHAPTER XXXVI.

DISSOLUTION.

- Dissolution
  - 1. How dissolved.
    - 1. By acts of partners.
      - 1. Mutual consent.
      - 2. Without consent.
      - 3. Assignment.
      - 4. Refusal to act.
    - 2. By order of court
      - 1. When a court will be asked to dissolve.
      - 2. Acts which amount to misconduct.
      - 3. Inability to act.
    - 3. By operation of law.
      - 1. Change of mental condition.
      - 2. Sale under execution.
      - 3. Bankruptcy of partner.
      - 4. Death of partner.
  - 2. Business may continue under new agreement.
  - 3. Powers that cease after dissolution.
  - 4. Powers that remain after dissolution.
  - 5. Notice of dissolution.

613. **How Dissolved.**—The contract of a partnership may be dissolved: 1. By acts of partners; 2. By order of court; 3. By operation of law.

614. **By Acts of Partners.**—The same power which creates a contract will dissolve it; therefore, the partnership contract may be terminated at any time by mutual consent of the parties, as it was by their consent that it was created. [115]One partner alone may dissolve the partnership, even without the consent of his co-partners. But if the contract stipulate a definite period of time for which the partnership is to continue, and a partner dissolve the partnership by refusing to act with his co-partners, he will make himself liable to pay, in many cases, heavy damages for breach of the partnership contract. But where no time is specified, and it is to continue at the will of the parties, either party may dissolve it at any time, and not make himself liable for damages.

[116]The assignment by a partner of his interest either to a co-partner or to a stranger will also dissolve the partnership, because the purchaser of the assignor's interest might be objectionable to the other partners. They might not have the

same confidence in him or trust in his integrity. Neither is the purchaser bound to become a partner for the same reason. But, by mutual consent, the purchaser may become a partner. If so, a new partnership is created, the old one being dissolved by the assignment.

A, B and C formed a partnership for a term of five years for the purpose of manufacturing street-car fenders. The business for the first two years was a complete failure, and because of this C assigned his interest in the firm to D. The assignment works a dissolution and makes C liable to his co-partners for breach of contract. Instead of assigning his interest in the business C might have simply refused to act longer with his co-partners and withdraw from the firm, which would also act as a dissolution and make him liable to the other members of the firm. Had the articles of co-partnership been silent as to the length of time of the partnership C could have withdrawn, and not be liable in damages for breach of the partnership agreement. When C assigned his interest in the business to D it worked a dissolution, yet A, B and D may enter into a new agreement to continue the business on the terms of the old partnership agreement, and the enterprise go on without any interruption whatsoever.

617. By Order of Court.—As previously stated, if no limit of time be fixed it is called a partnership at will, and may be dissolved at the individual pleasure of either party at a moment's notice. So can it be dissolved when a limit of time is fixed, but the partner causing the dissolution will be liable to his co-partners for damages they sustain. And it is in order to avoid this liability that a court of equity is asked to dissolve the partnership, for if the court order the dissolution no action for damages can be brought.

618. When Court Will Be Asked to Dissolve.—The aid of a court will be invoked when one partner wishes to wind up the affairs of the business and the other wishes to continue. The grounds on which a court of equity may be asked to dissolve the partnership are loss in business or inability to carry on without loss, or willful fraud, or gross misconduct of one of the partners, also gross carelessness and waste in the management of the business.

619. Acts Which Amount to Misconduct.—What acts of misconduct will warrant a dissolution depend largely on each case, but the following have been held sufficient: The keeping of fraudulent accounts; misappropriation of firm's assets to the individual use of a partner; the exclusion of a partner from participation in the management of the business; a gross violation of good faith; habitual intoxication, and, in general, any misconduct which endangers the interests of the firm or tends to destroy the confidence of his co-partners in him.

620. Inability to Act. So, also, the inability of a partner to act as per agreement is a sufficient cause for dissolution. Thus, Smith & Brown formed a partnership. Smith agreed to furnish $15,000 cash, to be paid into the business

inside of a year. His inability to put that amount of money into the business is a cause for dissolution.

621. **By Operation of Law.**—By a dissolation by operation of law is meant that the happening of certain things over which the partners have no control will of itself dissolve the partnership. The causes which will work a dissolution under this head are: 1. Change of the mental condition of a partner; 2. Sale under execution; 3. Bankruptcy; 4. Death of a partner.

622. **Change of Mental Condition.**—By this we mean if a partner has been adjudged insane, and his property placed in charge of a conservator, this would of itself dissolve the partnership. Many authorities, however, hold that lunacy of a partner in itself will not cause a dissolution, but only ground upon which a court may decree one. If the articles of co-partnership provide that the partnership may be dissolved upon notice, such notice, if given to the lunatic, will be effectual.

623. **Sale Under Execution.**—If a judgment be obtained against a member of a firm, the sheriff may sell such member's interest in the partnership to satisfy the judgment. The purchaser does not become a member of the firm. The sale of itself operates as a dissolution of the partnership.

624. **Bankruptcy of Partner.**—In case of bankruptcy or insolvency of one of the partners, not bankruptcy of the partnership, the assignment by him of his individual interest works a dissolution. The assignee does not become a partner. His only authority is to close up the bankrupt partner's affairs.

625. **Death of a Partner.**—Unless there be a special provision to the contrary in the partnership agreement, the death of a partner dissolves the partnership. This is true because his executor or administrator cannot represent him in the partnership business.

626. **Business May Continue Under New Agreement.**—Because there is a dissolution of the partnership it does not necessarily follow that the business must be closed up, for the remaining partners may enter into a new agreement to carry on the business upon the old terms. But if there be no such agreement, and the articles of co-partnership do not otherwise provide for a continuation of the business, its affairs must be wound up. There are certain powers of partners that cease and certain other powers that remain after dissolution, which we shall next consider.

627. **Powers that Cease After Dissolution.**—One direct consequence of the dissolution is the necessity imposed by it of taking prompt and effectual steps to wind up the partnership business. Therefore, neither partner can create new responsibilities, nor execute evidences of indebtedness, without the knowledge or consent of the others. Thus, neither partner has power to bind the others by giving a note in the name of the late firm for a partnership debt, or by accepting a draft drawn on the firm, or by the renewal of a note. So, also, after dissolution, neither partner has power to bind his co-partners by his declarations or admis-

sions subsequently made, i. e., a debt barred by Statute of Limitation would not be revived by an acknowledgment and promise to pay. A, B and C, as partners, owed a debt to D, which had been outlawed. After dissolution of the firm A promised D that the firm would pay the debt. This does not revive the debt; consequently the firm of A, B & C are not liable for its payment. So, also, if, after dissolution, B should give a note in the name of the firm to a creditor of the late firm, the note would be worthless, as the firm of A, B & C would not be liable because of the above rule.

628. Powers that Remain After Dissolution. After the dissolution of a partnership each partner has power to do whatever is necessary to close up the firm's business, i. e., to collect claims due the firm and to settle and pay its debts, unless there have been some agreement or order of court to the contrary. A partner may also, after dissolution, sell any part or all of the firm's property, but the payment for the property must be in money.

629. Notice of Dissolution.—The dissolution of a partnership as regards its own members and the public comes under different principles. As to its own members, it may be immediate and effectual, but in reference to the public it may not be immediate, for the element of notice comes in for consideration. As to third persons, the partnership dissolution does not become effective until they have had notice of such dissolution. If notice be not given, a retiring partner will continue to be liable for new obligations. If the dissolution has been caused by operation of law, no notice is necessary, because it is a fact of which the public is bound to take notice. When a dormant partner withdraws notice need not be given, because he was not known to be a partner.

[630]A circular letter announcing the dissolution should be sent to all parties who have done business with the firm, but a newspaper notice announcing the dissolution is sufficient for those who have had no prior dealings with the firm.

CASES.

(Give reasons for answers.)

1. A received money from a firm in order to enable him to do a commission business. For this he was to pay interest and divide his commissions, less his office expenses, with the lenders, who were not to be liable for his losses. Is the firm liable to third parties as the partners of A?[574]

2. A advanced B money to be used in the latter's business, taking notes for it, with the understanding that if he so desired he might become a partner, and that in such an event his money was to become his contribution. B carried on the business, took more than half the profits, and credited A with interest only on his loan, despite his protest that he was a partner, and should have a share of the profits. A then brought suit on the notes. Can he recover?[568, 574]

3. A, B and C entered into a venture in Texas, A and B furnishing the capital, B and C going to Texas with the goods, C traveling about to sell them. B was to receive a monthly salary for his services; C was to have for his share one-fifth of the profits. The balance of the profits were to be divided among the three. Are the associates partners?[587]

4. A machinist subscribed to a fund to keep the harbor free of ice. Does this bind his co-partners?[594]

5. If the firm of A & B draw on the firm of B & C, B being a partner of both firms, and the draft be accepted, is it necessary on its dishonor to have the acceptance protested in order to hold A & B?[600]

6. A and B carried on business as harnessmakers. A bought on the credit of the firm a number of bits to be made up into bridles, but instead of using the bits for the partnership business he pawned them for his own use. Is the seller entitled to recover of the firm?[594]

7. A, B and C are grain merchants. They agreed not to sell any more wheat for less than $1.25 per bushel. C, contrary to the agreement, sold all the wheat they had for $1.15 per bushel. Is the firm liable on the contract?[606]

8. Two persons were in partnership as solicitors. A client entrusted one of them with money to invest in a mortgage, and he was told that it had been invested, whereas the partner who had received the money had misapplied it. For years the client was regularly paid the interest by the solicitor who attended to the matter, and the fraud was not discovered until he became bankrupt. Is the other partner, who knew nothing of the fraud, liable to make good the money?[609]

9. A, who is a partner of B, pays a separate debt of his own with money of the firm, and the creditor who is paid is aware of the fact. B, on behalf of the firm, makes a demand for its return. Can he succeed?[609]

10. A, B and C are partners. It was agreed that C should participate in profits and loss, but should not be liable as a partner to third persons for debts. The firm was sued by a creditor who knew of the partnership agreement. Is C liable with his co-partners?[605]

11. A, B and C are in partnership as type founders, but A was a secret or dormant partner. A written agreement relative to the partnership business was entered into between F. A. Sadler and B and C. A's name did not appear in the agreement; he did not sign it, nor when the contract was made was he known to F. A. Sadler to be a partner. For a breach of the agreement, and A's connection with the firm being discovered, the three partners were sued. Is A liable on the agreement?[581]

12. Two partners, A and B, carry on business in the name of A. B accepts a draft in the name of A for the purpose of the partnership business. Are both partners liable?[593]

13. B, a partner of the firm of A, B and C, borrowed money and executed power of attorney to confess judgment in his own name. The money which he obtained was applied by him for the benefit of the partnership and was obtained with the knowledge of his co-partners in order that it might be so applied. Is the firm liable on the note?[595]

14. C joined the partnership business of A and B. B subsequently gave a creditor of the old firm a note in the name of the new firm. Is C liable on the note given in settlement of a debt contracted before he became a partner?[608]

15. A and B carried on business under the style of A & Co., but B was not known to be a partner. They dissolved partnership by mutual agreement, but did not give the public any notice of the dissolution. After the dissolution A gave Smith a promissory note in the name of A & Co., on which he sued A and B. Is B liable?[627, 629]

16. A clerk lent money to his employers, who were partners as brewers, and took their acknowledgment for it. Several changes took place in the firm, one of the original partners

retiring and other persons from time to time coming in and going out. The clerk remained in the employ of the firm notwithstanding these changes, and was aware of them, and was always paid interest by the firm for the time being. Is the clerk entitled to sue and recover of the two original partners?[608]

17. A was agent for B & Co. A obtained extensive credits for the firm of B & Co. by holding himself out as a partner of B & Co. Will A be liable with B & Co. for the goods supplied to A for B & Co.?[572]

18. A & B joined in the purchase of some wheat with the understanding of dividing and paying for it equally. Are they liable as partners?[572]

19. One of several partners was employed to purchase goods for the firm. He, unknown to his co-partners, supplied them at the market price with goods previously bought by himself when the price was lower, and he thus made a considerable profit. Must the partner account to his co-partners for the profits thus made?[587, 588, 589]

20. A, B and C are the partners of a law firm. C, without the knowledge of A and B, purchased real estate for the firm and extended in payment the firm's note. Is the firm liable on the contract? Is C liable?[602]

21. A, B and C are partners, and C, desiring for his own use goods such as the firm handled, bought a quantity, giving in payment the firm's note. He appropriated the goods to his own use without the knowledge of A and B. Is the firm liable on the note?[595, 609]

QUESTIONS FOR REVIEW.

1. Define partnership. 2. What may be invested? 3. How is a partnership created? 4. What is meant by a partnership by implication? 5. What is the true test of such a partnership? 6. Name the different kinds of partners. 7. What is an ostensible partner? 8. Define nominal partners. 9. What is the liability of a nominal partner? 10. What is meant by a dormant partner? 11. Are they liable for partnership obligations? 12. How are limited partnerships created? 13. What are the provisions of the statute regulating this particular class of partnerships? 14. What is the result if the statute creating them be not strictly complied with? 15. Who may be partners? 16. How may a partner escape or limit his personal liability to creditors of the firm? 17. What is the duty and liability of partners to each other? 18. What is the authority of each partner to bind his co-partners? 19. How may a partner bind the firm on negotiable paper? 20. What is the limitation on the power of a partner to borrow money for the firm? 21. To what extent do the declarations and admissions of a partner bind his co-partners? 22. What effect do restrictions of a partner's powers by the partnership agreement have as to third persons? 23. When will the firm be liable for the fraud of a partner? 24. Is there any limitation on the power of a partner to sell all or a part of the firm's property? 25. What is the two-fold liability of a partner for firm's debts? 26. How is a partnership dissolved? 27. If a partnership be created for a definite period of time, can it be dissolved by any member of the firm before the expiration of the time? 28. When will a court of equity be asked to dissolve a partnership? 29. What are the causes which a court will consider sufficient for its intervention? 30. What is meant by dissolving a partnership by operation of law? 31. After dissolution, may the business continue as before? 32. What powers of partners cease after dissolution? 33. What powers remain? 34. When does the dissolution take effect as to third persons? 35. How should the notice of dissolution be given?

CHAPTER XXXVII.

CORPORATIONS.

- CORPORATIONS
  - 1. Definition.
  - 2. Distinctive characteristics
    - 1. Legal entity.
    - 2. Individuality.
    - 3. Immortality.
  - 3. Classes
    - 1. Sole.
    - 2. Aggregate.
    - 3. Public.
    - 4. Private.
    - 5. Ecclesiastical
    - 6. Eleemosynary.
    - 7. Civil.
  - 4. How created.
  - 5. Place of residence.
  - 6. Capital stock and stockholders.

631. **Definition.**—A corporation was described by Chief Justice Marshall, in the celebrated Dartmouth College case, as "an artificial being, invisible, intangible, and existing only in contemplation of law." It is sometimes termed an *artificial person*. A corporation, like a partnership, cannot exist without the individual members composing it, but the law looks upon a corporation as being distinct and separate from its stockholders; that is, the contracts and obligations of a corporation are not considered as the contracts and obligations of the stockholders. When a lawsuit is brought against a corporation it is always in the name of the corporation, and not in the name of the stockholders. If a partnership is sued the suit is not in the name of the partnership, but in the names of the individual members composing the partnership. This is true because the law does not recognize the members of a firm as a collective body, while the converse is true in a corporation. In the actual transactions of business the ordinary partnership or firm is recognized as a united or corporate body, but the courts of law do not so consider them.

632. **Distinctive Characteristics.**—The general nature of an ordinary business corporation may be better understood by comparing such an association with an association organized for similar purposes, but not incorporated, i. e., partnership.

The distinctive features may be classified under three heads, namely: 1. Legal Entity; 2. Individuality; 3. Immortality.

[633]*Legal Entity.* A corporation can be called into existence only by an act of the legislature, while a partnership is the result of an agreement between parties. For instance, if A, B, C, D and E desire to form a partnership they can do so by simply agreeing to unite their capital, skill, time, etc., in the prosecution of some enterprise. But if they desire to form a corporation for prosecuting the same enterprise, in addition to their mutual agreement to do so, they will have to comply with the statute for the creation of corporations. (See Sec. 637.)

[634]*Individuality.*—1. A corporation is recognized by the law as a distinct person, and not in any way identified with its members, although it cannot exist without them. 2. It remains the same though all its members change. 3. It can sue and be sued by, and contract with its members. 4. It is not liable for the debts of its members, nor are the members liable for the debts of the corporation. (See Sec. 662.) 5. It has an individual name, by which it sues and contracts. 6. Its members are not authorized, as in partnership, by virtue of their membership, to act for the corporation. A corporation known as the "Toledo Stove Co." is composed of ten persons. If all the stockholders should die, or if they were to assign their stock to other parties, it would not in any way affect the corporation, while under similar circumstances a partnership would be dissolved. If the liabilities of the above-named company exceed the value of the paid-up capital the creditors could not fall back on the stockholders, while, if it were a partnership, they could.

[635]*Immortality.* Unless the charter expressly limits the time of the corporation, its existence is practically indefinite. The corporation is not dissolved, as in partnership, or affected in any way by the death of a stockholder or member.

636. **Different Kinds of Corporations.**—Corporations are divided into various dissimilar classes of institutions, namely: 1. Sole; 2. Aggregate; 3. Public; 4. Private; 5. Ecclesiastical; 6. Eleemosynary; 7. Civil.

A *sole* corporation consists of one person. The dignitaries of the Church of England, and in Massachusetts a minister seized of parsonage lands to himself and his successors, in right of the parish, are often cited as cases of corporations sole.

A corporation *aggregate* is composed of more than one. Corporations aggregate are divided into two classes: 1. Public; 2. Private.

Public corporations are merely government institutions of the public officers of the community. States, counties and municipalities are examples of public corporations.

Private corporations are associations formed by the voluntary agreement of their members, such as banking, railroad, manufacturing and publishing companies.

Ecclesiastical or religious corporations are formed for the advancement of religion. Various incorporated churches are of this class.

Eleemosynary or charitable corporations are formed for the administration of charitable trusts, and not for the benefit of the corporators themselves. Corporations formed for the management of free hospitals and asylums for the relief of the poor, insane, blind or otherwise helpless are examples of this class of corporations.

Civil corporations are those associations that are formed for the temporal benefit of their members, such as railroad and manufacturing companies, banks, clubs and other associations of a similar character.

637. **Creation of Corporations.**—A corporation cannot be formed, like a partnership, merely by a contract of the members composing it. The right to form a corporation is a franchise or special privilege, which cannot be assumed without authority from the governing power of the United States or of a State. In England the right to form a corporation may be granted by the King alone or by Parliament. In the United States Congress can grant a charter of incorporation only when it is an appropriate means for carrying out any of the authorized purposes of the Federal government. In the States the legislatures have the sole authority to grant the right to form a corporation.

[638]The act of the legislature creating the corporation is called its *Charter*. The legislatures of the different States have passed general incorporation laws under which corporations may be formed without a special act of the legislature. The general provisions of the law require that five or more citizens of the United States, three or more being citizens of the State, shall make, sign, seal and acknowledge before some officer competent to take acknowledgment of deeds a certificate in writing in which shall be stated:

1. Name in full and residence of incorporators.
2. Name of corporation.
3. Object and purpose of corporation.
4. Place where the business is to be carried on.
5. Amount of capital stock.
6. Number of shares and amount of each.
7. Number of trustees, directors or managers, and their names, who shall carry on the management of the concern for the first year.

[639]The certificate is to be submitted to the judge of some court for his approval as to whether or not it conforms to the law creating it. After the certificate is recorded the body shall be a corporation. We submit the following as forms showing the certificate of incorporation, the acknowledgment before a magistrate, and the judge's certificate showing that the certificate of incorporation is in compliance with the law:

640. Form.

CERTIFICATE OF INCORPORATION.

KNOW ALL MEN BY THESE PRESENTS, That we,

1. H. M. Grayson, Earle Winthrop, George R. Hart, E. R. Grayson and W. P. Richardson, all of the City of Seattle and of the State of Washington, all being citizens of the United States, and a majority of whom are citizens of the State of Washington, do hereby certify that we do, under and by virtue of the General Laws of this State, authorizing the formation of corporations, hereby form a corporation under the name of Seattle Publishing Company.

2. WE DO FURTHER CERTIFY, That the said corporation so formed is a corporation for Publishing, Dealing in and Selling Books, Stationery and Miscellaneous Materials for office and business purposes, and to do whatever may be necessary appertaining to the Book, Stationery and Publishing Business. That the term of existence of said corporation is limited to forty (40) years: and that the corporation is formed upon the articles, conditions and provisions herein expressed, subject in all particulars to the limitations relating to corporations, which are contained in the General Laws of this State.

3. WE DO FURTHER CERTIFY, That the operations of the said corporation are to be carried on in the City of Seattle and the State of Washington, and that the principal office of the said corporation will be located in the City of Seattle and the State of Washington.

4. WE DO FURTHER CERTIFY, That the aggregate of the Capital Stock of the said corporation is Twenty Thousand Dollars ($20,000), and that the said Capital is divided into Two Thousand (2000) Shares of the par value of Ten Dollars ($10) each.

5. WE DO FURTHER CERTIFY, That the said corporation will be managed by a Board of five directors, and that H. M. Grayson, Earle Winthrop, Geo. R. Hart, E. R. Grayson and W. P. Richardson are the names of the directors who will manage the concerns of the said corporation for the first year.

In witness whereof, we have hereunto set our hands and seals this first day of July, in the year nineteen hundred and six.

H. M. Grayson, [SEAL]
Earle Winthrop, [SEAL]
Geo. R. Hart, [SEAL]
Test: Fairman A. Sadler. *E. R. Grayson,* [SEAL]
W. P. Richardson. [SEAL]

ACKNOWLEDGMENT BEFORE MAGISTRATE.

STATE OF WASHINGTON, CITY OF SEATTLE, to wit:

Before the subscriber, a Justice of the Peace of the State of Washington, in and for the City of Seattle aforesaid, personally appeared, on this First Day of July, Nineteen Hundred and six, H. M. Grayson, Earle Winthrop, Geo. R. Hart, E. R. Grayson, W. P. Richardson, all of the City of Seattle of the State of Washington, and did severally acknowledged the foregoing certificate to be their act and deed. *JAMES U. DENNIS, J. P.*

JUDGE'S CERTIFICATE.

I, Henry D. Harlan, one of the Judges of the Supreme Bench of Seattle, do hereby certify that the foregoing certificate has been submitted to me for examination; and I DO FURTHER CERTIFY, that the said certificate is in conformity with the provisions of the law authorizing the formation of the said corporation. *HENRY D. HARLAN.*

641. Place of Residence.—A corporation legally exists only where the law creating it is in force. It, unlike natural persons, cannot change its domicile. It has a stationary habitation, but it can do business away from home through agents. A corporation located in Philadelphia was engaged in manufacturing wheelbarrows. The company sent a salesman to New Orleans, where he sold to a contractor a large quantity of wheels. The purchaser afterwards sought to avoid the contract because the company was doing business in a State from which it had received no charter. But the purchaser is bound by his contract, for, while the corporation itself cannot travel about from State to State, it can send its agents into other States and transact business in the same way that an individual can.

[62]It can do business outside of the State creating it only by courtesy of other States. But a State never extends this courtesy where the existence of the corporation or the exercise of its powers is prejudicial to its own interests. There is no absolute right of recognition in other States. A State may exclude a foreign corporation entirely, or may restrict it to certain localities, and may exact security for performance of its contracts. To illustrate, a life insurance company is formed in Ohio. The company, wishing to extend its operations into other States, makes application to the Superintendent of Insurance of the State of New York for a license to do business in that State. The Superintendent may refuse to grant such a license, thus excluding the company from that State. And the refusal by the Superintendent of Insurance of New York to grant an Ohio company license is sufficient cause for the Commissioner of Insurance of Ohio to put in force the retaliatory features of the Ohio law.

643. Capital Stock and Stockholders.—The capital stock of a corporation represents the corporate money, property and other valuable rights of the company, and the stockholders are the owners of the property, their interest in the property being measured by the value and number of shares each holds. The capital stock is divided into shares usually of $100 each.

CHAPTER XXXVIII.

POWERS AND LIABILITIES OF CORPORATIONS.

- Powers and Liabilities
  - 1. What a corporation can do.
  - 2. Implied powers.
  - 3. How business is done.
  - 4. Appointment of agents.
  - 5. Directors' personal benefit.
  - 6. To make contracts.
    - 1. For acts ultra vires.
    - 2. Prohibited by statute or common law
    - 3. In excess of corporate powers.
  - 7. For contracts of agent
    - 1. General rule.
    - 2. Exception to the rule.
    - 3. Illustration of exception.
    - 4. Application of rule.
  - 8. For torts.

644. What a Corporation Can Do.—A corporation derives all its powers from the act of the legislature creating it. Its charter is the measure of its power, and the enumeration of its powers implies the exclusion of all others. The intention of the legislature in incorporating a company is to enable the company to act in a corporate capacity so far, and so far only, as is necessary in order to carry on the business for which the company was formed. A company was granted a charter for the purpose of publishing books, papers, magazines, etc. The business grew to such magnitude that the company decided to manufacture the paper used in its own business; also to supply other publishers with paper. The corporation may be restrained by a stockholder or by the State from engaging in the manufacture of paper, because it is in excess of the powers enumerated in the Articles of Incorporation. Even though the paper manufactured be exclusively for the company's own purposes it would be exercising unauthorized powers.

645. Implied or Incidental Powers. In addition to the powers expressly conferred on the corporation by its charter, there are certain implied powers. They are those which are necessary to carry into effect the purposes of the corporation or the powers expressly granted. Necessary here means such powers as are reasonably convenient and appropriate. But the common law gives to every corporation certain inseparable powers, which are:

1. To have perpetual succession.
2. To sue or be sued, grant or receive by corporate name.

3. To purchase and hold land and chattels.
4. To have a common seal.
5. To make by-laws for the government of the corporation.
6. To appoint officers and agents.

646. **How Business Is Done.**—The business of a corporation is necessarily carried on by agents, and the principles of agency apply with the same force in corporations as with individuals. The president, board of directors and all the other officers of a corporate body are only agents acting on behalf of the stockholders of the corporations.

647. **Appointment of Agents.**—A stockholder has no implied authority to represent the company by the mere fact that he is a stockholder, nor has he any right to interfere in the management of its business in any respect. But a majority of the stockholders are invested with general supervisory powers over the affairs of the concern and can elect the board of directors and appoint agents who have the active management of the company's business. The stockholders cannot interfere with the duties of the directors or agents so long as they keep within the scope or limit of the charter or delegated powers. While the active management of the business is left to the directors of the corporation, they are are not allowed to make any radical changes in the business, i. e., cannot increase capital stock, nor accept alteration of the charter, nor wind up its business; but in payments of debts they can assign all the resources of the company to a trustee for the benefit of creditors.

648. **Directors' Personal Benefit.**—The directors occupy a position of trust, for by accepting the office they virtually promise the stockholders to give them the benefit of all transactions and to exercise the utmost good faith in the discharge of their duties. They cannot, therefore, use their official position for their own benefit or for the benefit of anyone except the corporation itself.

The directors are liable to the stockholders for fraud, malfeasance and gross negligence amounting to breach of trust.

649. **Power to Make Contracts.**—A corporation has authority to act in the same manner as a co-partnership in carrying on its legitimate business, and, therefore, it may enter into any contract which is reasonably adapted to further the enterprise for which it was chartered. In former times it was held that a corporation could not enter into a contract except through an instrument under seal. But at present the ancient rule has been entirely discarded, and corporations can make contracts without the use of a seal in all cases in which it may be done by individuals. No formality whatever is required. The corporation may borrow money whenever proper for the company's business, and this authority to borrow carries with it the authority to give written acknowledgment of indebtedness, and to give mortgage on the corporate property as security.

650. Corporation's Liabilities for Acts Beyond Its Authority.—All the acts of corporation are done by agents, who are:

1. Majority of stockholders.
2. Board of directors.
3. Customary or inferior agents.

The contracts of a corporation may be:

1. Prohibited by statute or common law.
2. In excess of corporate powers
3. Within corporate powers, but not within the authority of the agent who made the contract.

651. Prohibited by Statute or Common Law.—If a contract or transfer of property be made in direct violation of a statute or the principles of common law, it is either void or voidable, to be determined by the same rules which govern illegal contracts of individuals. Thus, if a corporation should sell or lease its franchise without the consent of the legislature it would be void.

652. Contracts in Excess of Corporate Powers.—A corporation cannot be compelled by legal process specifically to perform a contract which is executory on both sides and which is unauthorized by its charter, because such act would be illegal. A banking company sold to a milling company real estate. The bank filed a bill asking the court for a decree for specific performance of the contract, but the court refused relief on the ground that the milling company had no right to buy real estate under its charter. But if the contract, which is in excess of the charter of the corporation, has been executed in whole or n part, a party who has had the benefit of the agreement cannot be permitted to question its validity. A corporation, chartered for the purpose of managing a street railway, agreed to pay a State board of agriculture the sum of $1000, in order to induce the board to locate the annual State fair at a certain point upon the road. The fair was located accordingly, but the railway company refused to pay the money it had agreed to pay, claiming that the promise was void for want of authority to make it. It was held that the railway company was bound by its agreement, and that it was immaterial whether or not the company had authority to make it, inasmuch as the contract had been performed by one of the parties.

[653]The principle in all these cases is that it is unjust to permit one who has received the benefits of a contract to repudiate it on the ground that the corporation from which he has obtained the benefit had no power to make the contract. A corporation was sued on certain promissory notes which it had issued in violation of its charter, such violation constituting its defense. The plaintiff, how-

ever, was entitled to recover on the notes, because the corporation had enjoyed the use of the property for which the notes had been given.

654. **The Responsibility of a Corporation for the Acts of Its Agents.**—A corporation is bound, and bound only, by the acts and contracts of its agents, done and made within the scope of their authority. It is but justice to the shareholders of a corporation to hold that the company shall not be chargeable with unauthorized acts of its representatives. A majority of stockholders cannot bind the corporation by accepting an amendment of the charter or by effecting a consolidation with another corporation because of the rule, as stated.

655. **Exception to the Above Rule.**—It is an established rule of the law of agency that if an agent of a corporation be invested with apparent authority to execute a particular kind of contract, or be clothed with power to do an act, which power depends upon some fact peculiarly within the knowledge of the agent, a person who in good faith enters into such with the agent, relying on his apparent powers, may charge the company with the act, although the agent may in reality have exceeded his authority.

656. It is likewise established that a corporation cannot, under these circumstances, set up as a defense that the making of a contract was in excess of its chartered powers, and, therefore, prohibited by law.

657. **Illustrations of Exception.**—A negotiable note of a corporation, which upon its face appears to have been duly issued by such corporation, is valid in the hands of a *bona fide* holder, although such note was, in fact, issued for a purpose not authorized by the charter of the corporation. A debt incurred by a corporation for an unauthorized purpose is binding upon the company if the creditor acted in good faith and without notice of unauthorized acts. If a cashier certify a check for a depositor the bank is responsible for the payment of the check. So, also, if the directors borrow money without obtaining the prescribed resolution at a general meeting of the company the said company is bound.

658. **Application of Rule.**—The rule is applicable only when the agent acts within the scope of his authority under ordinary circumstances. Third persons are bound to take notice of limitations on the authority of an agent when prescribed by the charter of the company, but are not chargeable with the limitations of authority as prescribed in the by-laws. A corporation may ratify the unauthorized acts of its agents when such acts are within the purposes of the corporation. No certain form of ratification is necessary; in many cases mere failure to repudiate the act is sufficient.

659. **Liability for Torts.**—Corporations are liable for every wrong they commit to the same extent as individuals or co-partnerships under similar circumstances. An action may be maintained against a corporation for its malicious

or negligent torts, no matter how foreign they may be to the object of its purposes or beyond its granted powers. It may be sued for assault and battery, for fraud and deceit, for false imprisonment, for malicious prosecution, for nuisance and for libel. Its offenses may be such as will forfeit its charter. A suit to have a charter forfeited must be instituted in the name of the State granting the charter, and not by an individual.

CHAPTER XXXIX.

RIGHTS AND LIABILITIES OF STOCKHOLDERS.

RIGHTS AND LIABILITIES OF STOCKHOLDERS .....
1. The contract of membership.
2. Liability on subscription.
3. Individual liability.
4. Assessments and calls.
5. Subscription obtained by fraud.
6. Transfer of stock.
7. Assignment by endorsement.
8. Dividends.

660. The Contract of Membership.—The contract which exists among the members of a corporation, and which constitutes them a corporate association, is the contract of membership. Persons become members of a corporation by original subscription or by a transfer of shares of stock. A contract of membership gives the status of stockholders, and differs from a contract to become a stockholder. In the latter case, if the subscriber fail to fulfill his agreement, the corporation would be entitled to recover only the difference between the amount which the subscriber agreed to pay and the value of the shares in the market.

661. Liability on Subscription to Corporation.—By subscribing for capital stock the subscriber thereby promises to pay for the stock in the manner indicated by the charter. A number of persons had mutually agreed to form a corporation and to contribute a certain amount of capital stock each. An act of incorporation having been subsequently passed, it was held that the subscribers thereupon became shareholders, and, as such, were liable to pay in the capital stock which they had agreed to contribute. But subscriptions are not ordinarily enforceable against the subscribers until the whole amount of the capital stock is subscribed.

662. Individual Liability of Stockholders.—In many States stockholders are liable individually for only the amount of the unpaid subscription. If they have been released by the corporation after paying for only a part of the stock it does not in any way affect the rights of the creditors to compel the subscribers to pay in the full amount subscribed. The unpaid subscription of a corporation constitutes a trust fund to be held by the corporation for the benefit of creditors and stockholders. In some States, however, stockholders are liable to the creditors of the corporation for twice the amount of their stock. As this liability is usually regulated by statute, it will be necessary for the reader, if he be interested in the matter, to investigate the law of his own State on this subject.

663. Assessments and Calls.—Before subscribers become liable to contribute to the company's capital a regular call or assessment must be made upon all the subscribers, and under no circumstances can a subscriber be sued by the corporation on his subscription until the call has been regularly made. The time when the payments are to be made is frequently fixed by the charter. When not thus fixed the managing board of the company can issue a call whenever the money is needed for the authorized purposes of the corporation.

664. Subscription Obtained by Fraud.—If a person has been induced by fraudulent representations to become a member of a corporation he can withdraw without any liabilities attaching to his subscription. Subscriptions obtained by fraud between an individual and a company are to be treated like contracts between any two individuals. If the false representation be concerning some public law, or charter, or even contents of the subscription paper, or by promises or statements of mere matter of opinion, the contract of membership will be binding, because such representations do not constitute fraud.

[665]When the contract is voidable, a subscriber must use due diligence in avoiding it, for if he take part in the management of the concern after knowledge of the fraud he will be presumed to have waived the fraud. Thus, for example, a statement made by an agent obtaining subscription for shares in a railroad company to the effect that the road would be built upon a certain route or within a certain time would not render a subscription made upon the faith of it voidable, though the representations were false.

666. Transfer of Stock.—The charter or by-laws of a corporation usually prescribe a method for transferring the stock of a corporation, and when it does a transferrer does not lose nor does the transferee gain the status of a stockholder, unless the formalities thus prescribed are complied with. But when they are observed the transferee is entitled to the rights and subject to the liabilities of the transferrer. Stock may be assigned, however, so as to pass title by any agreement which is binding upon the parties, and the assignment will be protected

in a court of equity. Such an assignment does not change the relation between the assignor and the company, but the beneficial interest in the stock, however, belongs to the transferee.

667. Assignment by Endorsement. - When a party buys the stock of a corporation, the purchaser, instead of receiving the stock itself, usually receives a certificate showing that the holder is the owner of the stock described therein. The purchaser may obtain the stock itself, but for many reasons the certificate is preferable. By general custom, shares are assignable by endorsement and delivery of the certificate issued to the owner as evidence of his rights. It is well settled that after a certificate for shares has been endorsed by the holder, with an assignment and power of attorney to execute a transfer upon the stock books, the certificate thus endorsed may be transferred from hand to hand, and the last holder has the right to fill out the blank form of assignment and the power of attorney and have the transfer recorded on the books of the corporation.

[668]The Supreme Court of the United States says: "Stock certificates of all kinds have been constructed in a way to invite the confidence of business men, so that they have become the basis of commercial transactions in all the large cities of the country, and are sold in open market the same as other securities. Although neither in form nor character negotiable paper, they approximate to it as nearly as practicable. If we assume that the certificates in question are not different from those in general use by corporations, and the assumption is a safe one, it is easy to see why investments of this character are sought after and relied upon. No better form could be devised to assure the purchaser that he can buy with safety. He is told, under the seal of the corporation, that the shareholder is entitled to so much stock, which can be transferred on the books of the corporation in person or by attorney when the certificates are surrendered, but not otherwise. This is a notification to all persons interested to know that whoever in good faith buys the stock and produces to the corporation the certificate, regularly assigned, with power to transfer, is entitled to have the stock transferred to him. And the notification goes further, for it assures the holder that the corporation will not transfer the stock to anyone not in possession of the certificate."

669. Dividends.—The profits of the company are called dividends, which are divided among the owners of the shares in proportion to the amount of stock which each owns. None of the profits, however, are to be withdrawn from the company by the stockholders until the board of directors has declared a dividend. If there be no profits there can be no dividend, for the directors are not permitted to declare and pay a dividend out of the capital stock.

CHAPTER XL.

DISSOLUTION.

DISSOLUTION..... { 1. How dissolved ..... { 1. By expiration of charter. 2. By surrender of charter. 3. By legislative enactment. 4. By judicial proceedings. 2. Winding up dissolved companies.

670. How Terminated.—A corporation can be dissolved and its existence wholly terminated in any one of the following ways:

1. By expiration of the charter.
2. By surrendering the charter to the State.
3. By legislative enactment, if no constitutional provision be violated.
4. By forfeiture of the franchise and judgment of dissolution obtained in a proper judicial proceeding.

671. By Expiration of Charter.—If a corporation be chartered to exist during a certain period of time or until a certain day, its existence will terminate upon the expiration of the time or the occurrence of the day prescribed by the charter.

672. By Surrender of Charter.—A corporation may have its existence terminated by a surrender of its franchise to the State granting it. But to make such a surrender effectual it must be accepted by the State, and this can ordinarily be done only by an act of the legislature.

673. By Legislative Enactment.—It is now the custom in the United States to provide in charters of incorporation and general incorporation laws that a State shall have the right to repeal, alter or amend them at pleasure. The reservation of this right denies any intention on the part of the State to confer irrevocable rights upon the corporators. If this right be not reserved the State cannot revoke or annul the charter, because it would be contrary to the constitutional provision impairing the obligation of a contract.

674. By Judicial Proceedings.—The State may dissolve a corporation and annul its charter by judicial proceedings, the cause for annulment of the charter being the doing of wrongful acts or failure to perform obligations assumed by the corporation in favor of the State.

675. Winding Up Dissolved Companies. In some States it is provided by statute that after the dissolution of a corporation for any cause the company

shall continue to be a body corporate during a term of years for the purpose of prosecuting and defending suits and settling up its affairs, but not for the purpose of carrying on its regular business. In other States receivers or trustees are appointed, whose duty it is to collect the assets of the company, liquidate its liabilities and turn the balance of the property, which is usually converted into money, over to the stockholders.

CASES.

(Give reasons for answers.)

1. A company, incorporated for the purpose of manufacturing firearms and other implements of war, entered into a contract to manufacture railroad locks. Manufacturing and vending of "railroad locks" is not within the purposes for which the company was incorporated or within the powers conferred by its charter. Neither is such a business incidental to the purposes of incorporation so that it could be said that it was among its implied powers. But, having manufactured and delivered a large number of locks in accordance with a contract, is the company entitled to recover the price agreed upon?[652]

2. A stockholder of a company engaged in the manufacture of tinware bought a large quantity of tin to be used in the company's business. He had no authority whatever to buy for or to represent the company except that he was a heavy stockholder. The tin being such as is used by the company in its business, is it liable for the purchase money?[647]

3. In Case No. 2, would your answer be the same had the stockholder purchased a tract of land instead of tin?[649]

4. A depositor of Merchants' Bank drew a check for $3500. The depositor had $4000 to his credit. The cashier, in violation of the instructions of the board of directors of the bank, certified the check instead of paying it. Is the bank liable?[655]

5. In Case No. 4, suppose the depositor drew the check for a greater amount than he had in bank, and it was certified contrary to the instructions of the directors. What would be the bank's liability?[655, 656, 657]

6. A corporation was formed for the sole purpose of manufacturing and equipping street cars with fenders. The business being successful, the stockholders decided to increase the plant and manufacture street cars as well as car fenders. The directors bought a large quantity of lumber and other material to be used in constructing the cars. What are the rights of the creditors in case the company refuses to pay for the lumber and materials when they had knowledge that the company was exceeding its authorized powers?[652]

7. In Case No. 6, would your answer be the same if the creditors had no knowledge that the corporation was exceeding the provisions of its charter?[652]

8. A company known as the "Crown Cork & Seal Co." was incorporated under the general incorporation laws of Indiana by A, B, C, D and E. Suppose the company became insolvent and a creditor of the company sues A, who owns a majority of the stock. Can the creditor succeed? If they were partners, would your answer be the same?[631, 662]

9. In Case No. 8, to what extent are A, B, C, D and E individually liable? Would your answer be modified if they were partners?[605]

10. A, who had paid only fifty cents on the dollar of his stock for which he had subscribed, sold it to B, because he expected the company would fail. After assignment and transfer of stock on the books of the corporation, can creditors who dealt with the company

on the faith of A's being a stockholder look to him for satisfaction of their claims created while he was a stockholder?[653] Will A be obliged to pay the company the balance of his subscription for stock?[666]

QUESTIONS FOR REVIEW.

1. What is a corporation? 2. How is a corporation distinguished from a partnership? 3. Is a corporation dissolved by the death of a stockholder? 4. Define the different kinds of corporations. 5. How is a corporation created? 6. What is the charter of a corporation? 7. What is meant by general incorporation laws? 8. What must the certificate of incorporation contain? 9. Where is the domicile of a corporation? 10. May a corporation do business out of the State creating it? 11. What is capital stock? 12. From what source does a corporation derive its authority? 13. What is the limitation on the power of a corporation to do acts not expressly granted by the charter? 14. Who carries on the business of a corporation? 15. How may agents be appointed? 16. Can a stockholder act on behalf of a corporation by virtue of his being a stockholder? 17. What is the liability of a company when it acts in excess of its corporate powers? 18. What is the general rule as to the responsibility of a corporation for acts of its agents? 19. Give the exception to the general rule. 20. How do persons become members of corporations? 21. What is the extent of a stockholder's liability for the debts of the company? 22. What preliminaries are necessary before a subscriber becomes liable to pay in his subscription? 23. Can a subscription be avoided on the ground of fraud? 24. What is a certificate of stock? 25. How are stocks transferred? 26. How may the existence of a corporation be brought to an end?

CHAPTER XLI.

FIRE INSURANCE.

FIRE INSURANCE .....
1. Definition.
2. Policy of insurance.
3. Insurable interest.
4. Agents.
5. Representations and descriptions.
6. Alterations and repairs.
7. Assignment of policy.
8. Sale of property.
9. Loss must be by fire.
10. Performance of conditions.
11. Insurer's right to replace loss.
12. Amount to be recovered.
13. Policies in several companies.

676. Definition.—Insurance is a contract whereby, for a stipulated consideration, called premium, one party undertakes to indemnify the other against loss by certain risks. *Fire Insurance* is an agreement whereby one person agrees to

pay another a certain sum of money in case the latter should sustain a loss of property because of fire within a certain time. The person who insures the property and agrees to pay the loss is called the *Insurer*, and the person who has the property insured and is to receive the money or indemnity in case of loss by fire is called the *Insured*. An insurance company is usually a corporation possessing large capital.

677. Policy of Insurance.—The contract that is entered into by the insurer and the insured is called the *Policy*. The policy being a contract, all the elements, principles and rules of construction and interpretation of a contract apply with full force in determining the validity of a policy of insurance. The insured agrees to pay to the insurer a certain sum of money, in any event, called *Premium*, while the insurer agrees to pay to the insured only in case the property described in the policy is destroyed in whole or in part by fire. The policy describes the property in full, the amount for which it is insured and on which the premium is calculated and the time to the minute when it is to expire, usually at 12 o'clock noon.

678. Insurable Interest.—It is necessary that the insured should have some interest in the property protected, and the general rule is that one who derives a benefit from the existence of property, and would suffer damages from its destruction, has an insurable interest. Mortgagors and mortgagees have insurable interests in the property mortgaged. The mortgagee's interest is only to the extent of the debt. But if the debt be paid the insurance company is not liable to him in case of fire, because he sustains no loss. Similarly, a purchaser in possession under a contract to purchase has an insurable interest. Mechanics or material-men who have a lien on the premises for services performed or materials furnished may have the property insured over which their lien extends. Consignees may have the goods consigned to them insured; so, also, bailees can insure goods left in their care. Future products may be insured. From the illustrations given it will be noticed that it is not necessary that one person should own absolutely the property insured. Different persons may have different and distinct interests in the property, and the law allows each to protect himself to the extent of his interest. A, as a means of speculation, has his neighbor's house insured for $5000. The house is destroyed by fire. The insurance company is not liable to A, because he had no interest in the property. It is simply a wagering contract and void.

679. Agents. As the insurance companies are corporations, the business must necessarily be carried on entirely by agents. The agents appointed to procure insurance are usually classed as special agents, with limited powers. As the contract, called *Policy*, between the insurer and insured, is written, all the representations made by an insurance agent not contained therein are not in any way any part of the agreement, even though it be the representations that caused the insured to take out the policy; yet if those representations be not incorporated in

the policy they are of no effect whatsoever. The insured, in order to protect himself and thoroughly to understand the conditions of the agreement, should carefully read the policy and note its terms and provisions.

680. **Representations and Descriptions.**—A misrepresentation of material facts concerning the thing to be insured will free the insurance company from its obligations to indemnify the insured. The insurer is entitled to have a full, true and accurate description of the property and all that pertains to or in any way may affect the risk. If the replies to the usual interrogatories be false the company may avoid the policy. There is a distinction between representations and descriptions which are made simply for the purpose of identifying the property and those which are made for the purpose of determining the nature of the risk. In the former, if there be slight variations, it will not affect the policy, but in the latter the validity of the policy rests on the truths of the descriptions. An entirely erroneous description as to the place where personal property is situated, or a failure to mention buildings situated near the insured property, in answer to interrogatories, makes the policy void. Where a building was described as a dwelling-house, but was used partly for a billiard saloon and partly for a restaurant, the policy is void. So it is where the description was that the building was occupied as a storehouse, whereas a part of it was used for hacking hemp and spinning it into rope yarn. But where goods are described as in the dwelling-house of the insured, and it turned out that the insured had only one room as a lodger, and the goods insured being in this room, it was held that they were correctly described as complying with a condition in the policy that "the houses, buildings and other places where goods are deposited shall be truly and accurately described," such a condition relating to the construction of the house, and not to the interest of the parties in it.

681. **Alterations and Repairs.**—Alterations and repairs do not in themselves change the risk. But if the alterations be such that a higher rate of premium would have been demanded it will avoid the policy. If property be insured as a private dwelling, and afterwards the building be extensively altered for the purpose of running a boarding-house, and it be thus used, the policy not prohibiting the keeping of such a house, does not vitiate the policy.

682 If personal property be removed without the consent of the insurer from the building in which it was at the time it was insured, it will release the insurer.

683. **Assignment of Policy.**—Provisions in a policy that it cannot be assigned without the consent of the insurer are valid. But after a loss has occurred the insured may assign the policy, and the assignment will be valid, even though there be a provision in the policy which declares that such an assignment shall be void.

684. **Sale of Property.**—If the property insured be sold it will work a forfeiture of the policy. The purchaser would have no right to be indemnified for

any loss in case of fire, neither would the seller have any right to be indemnified, even though the policy be in his name, because, having sold the property, he sustains no loss by its destruction. If property, when bought, be insured, the purchaser should at once obtain the consent of the insurer and have the policy transferred.

685. **Loss Must Be by Fire.**—The loss must be occasioned by fire in order to give the insured a claim for damages. Where the register of a sugar-house was kept closed by mistake and caused the sugar to overheat and spoil, it was held not to be a loss by fire, but by mismanagement. A policy against fire covers losses by water used in extinguishing the fire, or loss from theft while the goods are being removed to a place of safety, but it does not cover loss by lightning unless there be ignition.

686. **Performance of Conditions.**—A party desiring insurance is usually required to fill out a form of application for insurance which contains many interrogatories concerning the location and description of the property. All of the representations made in the application for insurance are incorporated into the policy by reference in the policy that the said interrogatories and answers contained in the application are made a part of the contract of insurance. Every condition and provision inserted in the policy and in the application must be strictly and literally observed. When a provision which requires that in the event of loss an account of the particulars of it is to be rendered by the insured is inserted in a policy no action can be maintained until this provision has been complied with. In some instances its delivery within a specified time is a condition precedent to the right of recovery.

687. **Insurer's Right to Replace Loss.**—In order to deter evil-disposed persons from willfully setting their own property on fire for the purpose of obtaining the insurance money, the insurer inserts a provision in the policy which gives him the right to repair or rebuild, or to pay the amount of the loss. This gives the insurer the right to elect which he shall do. Where the damage is slight the insurance companies usually repair instead of paying the money. A's dwelling-house, insured for $3000, was damaged $500 by fire. The insurance company believes the property was set on fire by A for the purpose of obtaining the insurance money. The company may, instead of paying the loss, expend the money in repairing the building.

688. **Amount to Be Recovered.**—It is the prevailing opinion among many persons that no matter what the property is worth the insurer is obliged to pay the amount stipulated in the policy. This is erroneous. The amount stated in the policy only represents the maximum amount for which the company is willing to become liable, and not the amount that the insurance company agrees to pay. If a party insure his property for more than it is worth he can recover

only its real value; but the amount insured is the base on which to calculate the premium. So that in such a case the insured is the loser to the extent of the premium he has to pay on the overvaluation of his property. A insures his house, valued at $8000, for $5000. A loss occurs by fire and water amounting to $2000; the loss is fully covered, and A is entitled to $2000. Suppose the building were completely destroyed, then the loss is not fully insured, and A could only recover the amount of the policy. But had A insured the property for $10,000, when it was worth only $8000, he could only recover his actual loss, $8000, and not the amount stipulated in the policy.

689. Policies in Several Companies.—Insurance companies prefer many and small risks to few and large ones, because in case of a fire the loss does not cause uneasiness among the policy-holders. Thus, a manufacturing company owns a plant valued at $50,000, which they decide to have fully insured. No one company would insure it for its full value, because in case of its destruction the loss might seriously affect the insurance company. It will be necessary for the owners of the property, if they desire to be fully protected, to take out policies in several companies; then, in case of loss, each company, provided there were ten of them and each insured for $5000, would only have to pay $5000, thus dividing the loss among the ten companies. If there were only a partial destruction of the property each company would pay that proportion of the loss which the amount of the policy bears to the whole amount insured. Suppose, in the above illustration, the property were damaged to the extent of $3000; this being 6 per cent. of $50,000, the total amount insured, each company would be required to pay 6 per cent. of its policy, which would just make good the loss.

GENERAL REVIEW CASES.

(Give reasons for answers.)

1. A desired insurance on his property, but at that particular time was unable to pay the premium. Therefore, B had the property insured in his own name. The property was destroyed. What are B's rights?[678]

2. A borrowed of B $2000, and gave as security a mortgage on his warehouse, which was valued at $15,000. B had the warehouse insured for $10,000. The property was totally destroyed by fire. Is the insurance company liable to B? If so, to what extent?[678]

3. In Case No. 2, what would be B's rights if the debt had been paid before the destruction of the property?[678]

4. An agent insured a planing mill, owned by B, for $8000. The company, when insuring such risks, inserts a provision in the policy which requires that the insured shall keep a watchman on the property. The agent, in order to induce B to take out a policy, promised that he would not require him to keep a watchman on the premises; whereupon B took the insurance. The policy, however, contained the usual stipulation referred to. The property burnt, but the com-

pany refused to pay the loss, because the insured did not comply with the conditions of the policy. What rights has the insured?[680]

5. A loaned B $700 with which to buy furniture. A then had the furniture insured for his own benefit. It was destroyed by fire. Is the company liable?[678]

6. A had his stock of dry goods insured. Subsequently he removed his stock into another storeroom, which was much better protected in case of fire than the former. Can A collect the insurance in case of a fire?[681]

7. A sold property to B which was fully insured. B, knowing that the property was insured, thought that he was fully protected. The property was destroyed by fire. Is the company liable to either A or B?[684]

8. B insured his property, worth about $5000, for $8000. The property was destroyed by fire. How much can B recover?[688]

9. A had his property insured for $20,000 in the following companies: Etna, $5000; Hartford, $3000; Home, $6000; Vermont, $2000; Mutual, $4000. A loss of $7000 was caused by fire. How much must each company pay?[689]

QUESTIONS FOR REVIEW.

1. What is fire insurance? 2. Who are the parties to the contract? 3. What is the contract called? 4. What is meant by "insurable interest?" 5. What effect will misrepresentations concerning the risk have on the policy? 6. If the place where the property is located be inaccurately described, what effect has it on the validity of the policy? 7. What is the effect on the policy if the premises be repaired or altered? 8. May a policy be assigned without consent of the insurance company. 9. If the property be sold, how does it affect the policy? 10. What is the result in case of non-fulfillment of conditions of the policy? 11. What are the rights of the insurer as to replacing the loss? 12. For how much is the insurance company liable in case of loss?

CHAPTER XLII.

REAL PROPERTY.

690. **Property in General.**— Property includes whatever can be exclusively possessed or enjoyed. There are certain material objects, such as the ocean, light and air, unconfined, and other forces of nature, which cannot be exclusively enjoyed, therefore not property. Wild animals not in captivity or domesticated are not subject to the laws of property.

691. **Corporeal and Incorporeal Property.**— As to its intrinsic character, property is either corporeal or incorporeal. Corporeal property has a substantive existence, such as land, buildings, animals, merchandise and other material objects which are capable of ownership by man. Incorporeal property does not have a substantive existence. It exists only in contemplation of law. It consists of rights growing out of the use or enjoyment of corporeal property, the

most important of which are easements. An easement is the right of enjoyment in another person's land, or the right that one proprietor has in the estate of another. Among the most commonly known is the right that an owner of soil has to have it supported in its natural position by the owner of the land adjoining his; the right of way which one has over the land of another, such as a foot-path or roadway; the right of one man to draw water across the land of another; the right to receive light and air across the land of another, and the right of joining colossal buildings to the support of each other.

692. **Real and Personal Property.**—As to its legal character, property is either real or personal. Real property is such as is immovable. It consists of lands, buildings and anything that is permanently annexed thereto. Personal property is movable, or property that a person can take with him. Personal property is also known as chattels. There is a distinction between real property and real estate. The latter represents the interest that one has in real property, and not the property itself. A person may have a personal estate in real property, and that is always the case where the interest is less than a freehold estate. A real estate in real property is such an estate as in contemplation of law is permanent and without end. A personal or leasehold estate is such an estate as in contemplation of law is not permanent and without end.

693. The following outline represents the principal estates in real property:

- Estates
  - 1. Freehold
    - 1. Fee-simple estates.
    - 2. Life estates
      - 1. Dower.
      - 2. Curtesy.
  - 2. Personal or leasehold
    - 1. Estate for years.
    - 2. Estate from year to year.
    - 3. Estate at sufferance.
    - 4. Estate at will.

694. **Inheritable and Life Estates.**—Freehold estates include estates for life and inheritable estates. An estate of inheritance is one that may survive the original owner and at his death descend to his heir at law. An estate for life is one that terminates with the life of the tenant or the life of some other person.

695. **Fee Simple Estates.**—A fee simple estate is an estate granted to a man and his heirs in general. It is the largest possible estate, and includes all others. The owner may alienate it or divide it up into lesser estates. If it has not been disposed of by will, at the owner's death it goes to his heirs at law. An estate in fee tail is an estate granted to a man and the heirs of his body.

696. **Estate for Life.**—A tenant who has an estate to continue during his life, or that of another person, has full use of the land and all its profits during his ownership, but is not permitted to do any act which will impair or decrease the

value of the property. He can take such wood as he needs for his fire and for necessary repairs of buildings, fences and the like. He also can take minerals and ore from mines already open, but is not permitted to open new mines for that purpose.

697. Estate in Dower.—An estate in dower is a life estate which a surviving wife has in one-third of all the real property that her husband owned during his life. The husband cannot defeat his wife's right of dower by selling or otherwise disposing of his property. She may release her right of dower by signing the deed with her husband when the land is sold. Therefore, if the purchaser wish a clear title the wife must join her husband in executing the deed. Some States give the wife dower only in land that her husband owned at the time of his death. Other States give the wife dower in her husband's equitable as well as legal estates.

698. Estate by Curtesy.—An estate by curtesy is the life interest which the husband takes in his wife's real property which she owned at any time during coverture. One essential requisite to the vesting of this estate is that there must have been a child born alive and capable of inheriting the estate. The husband has the benefits of the whole estate, and not only a part of it, as in the case of a dower. This estate has been modified by nearly all the States, many not requiring issue to be born. It does not exist in Ohio, Illinois, Texas, Kansas, Georgia, Michigan, South Carolina, Indiana, California and Louisiana. In these States the husband takes the same interest in his wife's property as she does in his.

CHAPTER XLIII.

LANDLORD AND TENANT.

699. Leasehold Estates.—Estates for years, estates at sufferance, estates from year to year and estates at will represent what is commonly called tenancies, the most important of which is the tenancy for years. In these tenancies the parties are known as landlord and tenant, or lessor and lessee. The relationship is created by the owner of real property leasing it to another.

700. Tenancies for Years.—A tenancy for years is one granted for a certain period of time. The word *years* is simply used as a unit of time. A tenancy for years may continue for a month, week or even a day. It is created by a contract called a lease, so as to begin and end at certain specified dates. The following represents a lease, with its usual provisions and stipulations:

701. Form. LEASE.

LANDLORD AND TENANTS' AGREEMENT.

This Agreement, Made this *First* day of *August*, 1905, between *James L. Converse*, ~~~~~~~~~~~~~~~~~~~~~~~~~~Landlord, and *Henry O. Harlan*, ~~~~~~~~~~~~~~~~~~~

702. Lease.—The Statute of Frauds requires all contracts not to be performed within one year to be written; therefore, leases extending over one year must be written in order to enforce them. Some States have extended verbal leases to three years.

703. Rent.—Rent is the compensation given for the use of property. It may be money or a part of the profits of the property, and is usually paid monthly or quarterly. In the absence of any statutory regulations or covenants, if the property should be destroyed by fire or other causes the tenant must nevertheless continue to pay rent until the expiration of the lease. Statutory regulations usually relieve the tenant from any such responsibility. For instance, in Ohio, Maryland and other States a covenant or promise by the tenant to leave, restore, surrender or yield up the premises in good repair shall not have the effect of binding him to erect similar buildings or pay for such buildings as may be destroyed by fire or otherwise without negligence on his part unless otherwise expressly provided by written agreement, or covenant that he shall be so bound.

704. Assignment and Subletting.—If the lease be silent as to assigning and subletting the premises, the tenant may assign his entire interest to a third party. If he give up his entire interest it is called *Assignment*. If only a part of the premises be rented by a tenant to another it is called *Subletting*. Leases usually contain provisions prohibiting the tenant from subletting or assigning his interest. If the tenant violate these provisions the landlord may re-enter and take possession of the property.

705. Distraint for Rent.—To distrain for rent is the right that the landlord has to seize and to sell the personal property found on the premises leased to the tenant to satisfy his claim for the rent that is due.

706. Renewal of Lease.—If at the end of the term no new lease be made, and the tenant holds over, there is an irrebuttable presumption that the old lease, with all its provisions, is renewed. A rents a house of B for one year. At the expiration of his lease nothing is said about a renewal, but A continues to keep possession. He will be bound for another year under the terms of the former lease.

CHAPTER XLIV.

TITLE.

707. Definition.—Title is the means whereby an owner of an estate acquires his right to property and his right of possession. When the owner of real property dies without having disposed of it, the law does it for him. Leaving no will,

he is said to die *intestate*. The persons to whom the law gives his property are called his *heirs* and he their ancestor, and the title by which they take the property is called *title by descent*. All other methods of acquiring property, whether by operations of law or by acts of the parties, are by *pu chase*.

708. **Deed.**—The usual method of acquiring title to real property is by deed. A deed, as applied to real estate, is a written instrument under seal whereby one person conveys an estate to another. The most important deeds are what are commonly known as warranty and quit-claim deeds. The warranty deed is the one universally used.

709. **Differences Between Warranty and Quit-Claim Deed.**—In a quit-claim deed the grantor conveys only his own title, and no more. The grantee has no cause of action against him if he should be ousted by others, for the grantor does not warrant that his title is superior to all others. He simply relinquishes his own interest in the property. In a warranty deed the grantor conveys not only his own title and interest in the property, but makes certain promises or warranties, called covenants, concerning the title which he conveys.

710. The most usual covenants are: 1. That he (grantor) has the estate which he assumes to convey. 2. That there are no incumbrances on the property, such as a right of dower, outstanding mortgages, mechanics' liens, unpaid taxes, etc. 3. That the grantor, his heirs and successors hold against all persons claiming title or interest in the land. This covenant runs with the land, and anyone who is ousted may sue the grantor for the purchase price and interest. There are many other interesting points about a deed, but we do not deem it advisable to enter into a further discussion of the requisites of a deed, for no layman would trust to his own knowledge to draw up or examine one with a view to determining its correctness. Lawyers and real estate conveyancers are employed for this purpose. The following is a form for a warranty deed:

711. **Form.**

WARRANTY DEED.

This Indenture, *Made this nineteenth day of September, in the year of our Lord, one thousand nine hundred and five, between James R. Conway and Clara M. Conway, his wife, of the City of Philadelphia and State of Pennsylvania, parties of the first part, and Daniel L. Herford of the City of York and the State of Pennsylvania, party of the second part,*

WITNESSETH, That the said parties of the first part, for and in consideration of the sum of One Thousand Dollars, lawful money of the United States of America, unto them well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, and confirmed, and by these presents do grant, bargain, sell, alien, enfeoff, release, and confirm unto the said Daniel L. Herford, his heirs and assigns, all that lot of

ground situated in the City of Philadelphia and the State of Pennsylvania, and known and described as follows, that is to say:

BEGINNING for the same on the west side of Charles Street at the distance of 100 feet northerly from the corner formed by the intersection of the north side of Market Street and the west side of Charles Street and running thence northerly binding on the west side of Charles Street for 50 feet, thence westerly parallel with Market Street 100 feet to the east side of an alley 10 feet wide there situated; thence southerly binding on the east side of said alley with the use thereof in common 50 feet; thence easterly parallel with Market Street 100 feet to the place of beginning.

TOGETHER with the building thereupon, and the ways, water courses, rights, liberties, privileges, hereditaments, and appurtenances whatsoever thereunto belonging or in any wise appertaining, and the reversions and remainders, rents, issues, and profits thereof: and all the estate, right, title, interest, property, claim and demand whatsoever of the said parties of the first part in law, equity or otherwise howsoever, of, in and to do the same and every part thereof.

TO HAVE AND TO HOLD the lot of ground and premises hereby granted to the said party of the second part, his heirs and assigns, forever in fee simple. And the said parties of the first part, their heirs, executors and administrators, do by these presents covenant, grant, and agree to and with the said party of the second part, his heirs and assigns, that they, the said parties of the first part, their heirs, all and singular, the hereditaments and premises herein above described and granted, or mentioned and intended so to be, with the appurtenances, unto the said party of the second part, and his heirs, and against the said parties of the first part, and their heirs, and against all and every other person or persons whomsoever lawful claiming or to claim the same or any part thereof, shall and will warrant and forever defend.

In witness whereof, the said parties to these presents have hereunto set their hands and seals the day and year first above written.

Test: *James R. Conway,* [SEAL]

Stephen S. Clark, J. P. *Clara M. Conway.* [SEAL]

[712]Deeds must be acknowledged and recorded according to the laws of the different States.

CHAPTER XLV.

MORTGAGES.

713. Definition.—A mortgage is an instrument conveying property upon condition as security for the payment of some debt or the performance of some act, and is to become void upon payment or performance. The person giving the mortgage is called the *mortgagor*, and the person in whose favor it is drawn is called the *mortgagee*. The mortgage conveys to the mortgagee the legal title to the estate.

714. Equity of Redemption.—The equity of redemption is the right that remains in the mortgagor to redeem the estate conveyed by payment of the debt. When the debt is paid the mortgage becomes void and the legal estate returns to the mortgagor. A person may give as many mortgages as other parties are willing to take. A mortgage first recorded is called first mortgage; second recorded, second mortgage, etc., and when foreclosure is made, if the proceeds of the sale are exhausted in satisfying the first mortgage, the second mortgage will remain unsatisfied. The first mortgagee is entitled to have his claim fully satisfied notwithstanding the pressing demands made by the other mortgagees of the same property that their claims should receive some consideration.

715. Possession.—It is the rule in this country that the mortgagor retains possession of the mortgaged premises. When he does he takes the rents and profits free of any claims of the mortgagee, but he is not permitted to commit waste. If the mortgagee takes possession he must apply the rents and profits to the debt secured by the mortgage.

716. Insurable Interest.—Both the mortgagor and the mortgagee have insurable interests in the property. If the mortgagee insures at his own expense he is entitled to the insurance money free of the debt, i. e., he need not apply the insurance money to the debt. If the mortgagor insure, and without any agreement that it is for the benefit of the mortgagee, he is entitled to the insurance money free from any claim of the mortgagee.

717. Foreclosure.—If the equity of redemption be lost or barred by a failure to make payment the mortgagee has a right of foreclosure. This consists in filing a bill in a court of equity asking for a decree requiring the property covered by the mortgage to be sold and that the proceeds of the sale be applied to satisfying the mortgagor's debt. The court will issue a decree requiring the property to be advertised for sale, and to be sold at public auction. After a ratification of the sale by the court the proceeds will then be applied to the mortgagee's claim. If anything remain of the proceeds of the sale it is returned to the mortgagor. This procedure is known as an equitable foreclosure and is the one universally adopted by the States. The other method of foreclosure is when the court orders the title to be made absolute in the mortgagee. In this case the mortgagee takes possession of the premises as his own. This is known as a strict foreclosure, and is very unpopular in this country, because, in many instances, the mortgagee acquires property worth many times the value of the debt.

718. Statutory Regulations.—It is not deemed advisable in a work of this nature to give further details as to the execution, recording, release, assignment, etc., of mortgages, as it is regulated by statutes, which vary in the different States. Furthermore, not even the shrewdest and most prudent business man would ever attempt to trust these matters to his own knowledge, because they abound in

technicalities and formalities which are understood only by lawyers and real estate conveyancers, who have made a special study of them, and it is not our purpose to prepare students taking a commercial course to do their own conveyancing. The following form illustrates a mortgage.

719. Form.

MORTGAGE (Short Form).

This Indenture, *Made this nineteenth day of September, in the year one thousand nine hundred and five, between George R. Martin of the County of Defiance and the State of Ohio, party of the first part, and David C. Ramsey of the City of Bryan and the State of Ohio, party of the second part, witnesseth, that the said party of the first part, in consideration of the sum of One Dollar to him duly paid before the delivery hereof, has bargained and sold, and by these presents does grant and convey to the said party of the second part, and his heirs and assigns forever, all that tract of land situated in Defiance County and State of Ohio hereby described, that is to say:*

BEGINNING for the same (here describe the property) with the appurtenances, and all the estate, right, title, and interest of the said party of the first part therein.

THIS GRANT is intended as a security for the payment of Twelve Hundred Dollars loaned by the party of the second part to the party of the first part to be paid with interest at six per cent. per annum at the expiration of one year from the date of these presents, which payments, if duly made, will render this conveyance void. And if default shall be made in the payment of the principal or interest above mentioned, then the said party of the second part, or his executors, administrators, or assigns, are hereby authorized to sell the premises above granted, or so much thereof as will be necessary to satisfy the amount then due, with costs and expenses allowed by law.

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and the year first above written.

Test: James U. Clark. *George R. Martin.* [SEAL]

Mortgages must be acknowledged and recorded the same as deeds.

GENERAL REVIEW QUESTIONS.

1. Define property. 2. Distinguish between corporeal and incorporeal property. 3. What is an easement? 4. Distinguish between real and personal property. 5. What is a personal estate? 6. Define real estate. 7. What is meant by a freehold estate? 8. Define a fee simple estate. 9. What is a life estate? 10. Explain an estate in dower. 11. What is the husband's interest in his wife's real property called? 12. Who is a landlord? 13. Who is a tenant? 14. What is tenancy for years? 15. What is rent? 16. When may a tenant assign or sublet his lease? 17. What remedy has a landlord to enforce payment of rent? 18. What is *title* as applied to real property? 19. Who is an intestate? 20. Who are heirs? 21. Define a deed. 22. What is a warranty deed? 23. What is the peculiarity of a quit-claim deed? 24. What is a covenant? 25. Name the usual covenants in a warranty deed. 26. What is a mortgage? 27. What is the object of a mortgage? 28. Who are the mortgagor and mortgagee? 29. What is meant by equity or redemption? 30. How is a mortgage foreclosed?

CHAPTER XLVI.

SURETY AND GUARANTYSHIP.

720. **Definition.**—When a party agrees to become responsible for the debt of another, or the performance of some act by him, it is a guaranty or surety. "Guarantor" and "Surety" are often used indiscriminately as synonymous terms, but there is a distinction, which, though technical and sometimes difficult of application, it is of sufficient importance to require an explanation. A surety is bound with his principal by having signed the same instrument at the same time and on the same consideration. He is an original promisor and debtor from the beginning. On the other hand, the contract of a guarantor is his own separate undertaking, generally made and executed before or after and independently of the contract which created the debt or which requires the performance of a certain act.

721. **The Contract Must Be Written.**—The Statute of Frauds requires all contracts whereby a person agrees to become responsible for the debt or wrongful act of another to be written. Therefore, an oral promise to become responsible for the debt of another or the performance of some act by him is not binding.

722. **Collateral Undertaking.**—The contract of a guarantor is a collateral undertaking, and in order to bring it within the Statute of Frauds the party for whom the promise is made must be liable to the party to whom it is made. A's promise to pay B a debt due from C need not be in writing, provided the promise is made in consideration that B gives C a release, because C, being no longer liable, it is not a case of guaranty. But an oral promise to pay the debt of another, the original debt not being released, is within the Statute. It is absolutely essential that the guaranty be for the payment or performance of something for which another person is liable.

723. **Consideration.**—There must be a sufficient consideration to uphold the contract of guaranty. In case of a surety the consideration of the principal contract is sufficient for the suretyship. If the guaranty be made at the same time the principal contract is made one consideration for both is sufficient, but if it be made before or after the principal contract there must be a new consideration. The consideration for the guaranty must be expressed in the memorandum in the following States; Maryland, Alabama, Delaware, Illinois and Wisconsin. While the other States do not require the consideration to be expressed, it is prudent in all cases to express it. The phrase, "value received," is sufficient to express the

consideration. "We take pleasure in recommending A to B, and agree to become responsible for $400 to said B in thirty days after the completion of the work." It was held that the guaranty was void, because the consideration was not expressed in the paper itself, and parol evidence was inadmissible to establish it. In those States, however, where the consideration need not be expressed in the contract, such a guaranty would be valid.

724. Guaranty of Payment and Collection.—There is a difference between guaranty of payment and guaranty of collection. In case of guaranty of payment the guarantor can be sued at once upon refusal of the principal to pay. In guaranty of collection the principal must be sued first, and if the judgment cannot be satisfied out of the debtor's property, then action may be brought against the guarantor. All legal remedies must first be exhausted. To the creditor a guaranty of payment is preferable to a guaranty of collection. The following represent forms for guaranty of payment and collection to be endorsed on a note:

Guaranty of Payment.

For value received I hereby guarantee the payment of the within note.

C. L. Brown.

Guaranty of Collection.

For value received I hereby guarantee the collection of the within note.

C. O. Mason.

725. Guaranty for an Existing Debt.—The following form is sufficient to guarantee the payment of an existing debt:

CHICAGO, ILL., May 19, 1905.

JAMES R. CURTIS,
Detroit, Mich.:

Dear Sir—If you will extend D. L. Coy thirty days' additional credit on his $2000 note, which is due on the 24th inst., I will guarantee its payment at the expiration of that time.

Yours truly, A. L. JONES.

726. Continuing Guaranty.—It is generally held that a letter guaranteeing the payment of purchases is confined to the first sales, and not to any and all subsequent sales. Thus, where the guarantor wrote, "Please deliver to A goods as he may want from time to time not exceeding $300 in amount, and if not paid for by him within thirty days I will be responsible for the same," it was held that the guaranty was exhausted by the first purchase of goods amounting to $300. The guaranty may, however, be so worded as to secure the performance of successive debts and acts; if so, it is then called a continuing guaranty. The following form illustrates such a guaranty:

BALTIMORE, May 19, 1905.

MESSRS. HAMBURGER & SONS,
New York City:

Gentlemen—For value received I hereby guarantee the payment of all goods that you may sell to Fred. D. Roe, upon the usual terms of credit, in any amount not exceeding $2000. This letter is designed as a continuing guaranty.

Yours respectfully,
CHARLES P. WILSON.

727. Guarantor's Liability.—A guarantor or surety does not become liable until there is a default on the part of the principal to perform his contract. Their liability cannot be extended to any other debts or transactions than those covered by the contract. This rule is rigidly enforced. The courts, when there is a doubt as to the meaning of a contract of guaranty, construe it in favor of the guarantor.

728. Subrogation.—Subrogation is the placing of one person in the legal rights of another person, called the creditor; that is, when a guarantor pays the debt of his principal he is entitled to all the rights and securities that the creditor holds against his debtor. If the creditor part with or dispose of any securities which would protect the guarantor, he discharges him from liability on his guaranty.

729. Contribution.—When there is more than one surety or guarantor, and the debt is paid by one of them, he is entitled to contribution from his co-surety or co-guarantors. Each surety must pay his *pro rata* share, and is not discharged from his obligation until he has done so. The payment by one of them does not discharge the others.

730. Surety or Guarantor, How Discharged. A surety or guarantor may be discharged from his obligation without payment in a number of ways, the most important of which are:

1. Allowing additional time for payment.
2. Alterations and laches.
3. Fraud.

731. Allowing Additional Time for Payment.—Additional time for payment given by the creditor to the principal without the consent of the surety or guarantor will discharge them from all liability. But the agreement for the extension of time must be based on a valuable consideration, otherwise the agreement for such an extension would be invalid, and the surety or guarantor would continue to be liable. In case of a debt, if the debtor agree to pay a greater rate of interest, or pays interest in advance, it will be a sufficient consideration for an extension of time, and thus discharge the guarantor. Paying interest is generally held to be a sufficient consideration for the extension of time. While the courts

are not in harmony on this point, yet the weight of authority seems to uphold the rule as stated.

732. **Alterations and Laches.**—Any alterations or changes in the terms of the contract between the debtor and creditor will in every case discharge the surety or guarantor. Their liability is only on the original contract, and they cannot be held if it be modified without their consent. So, if the creditor be guilty of laches, whereby the security to which the surety or guarantor, on paying the debt, would be entitled, is lost, they will be released. Thus, where a creditor has in his possession property belonging to the debtor, which he might apply to the extinguishment of the debt, but instead allows it to pass to the debtor, the surety is discharged.

733. **Fraud.**—If there has been any fraud practiced on the surety or guarantor by the creditor or debtor with the consent of the creditor, it discharges the surety or guarantor from all liability.

734. **Surety, Guarantor and Endorser.**—A surety is liable with his principal as an original promisor. He need not be notified of the default of the principal, and action need not be taken against the debtor immediately upon default in order to hold the surety. A guarantor's liability is secondary and conditional. He may be discharged from liability if notice of default by debtor be not given him, and this will always be the case where the guarantor has been damaged by not having received a notice. An endorser's liability is conditional, depending on due presentment for payment and due notice of dishonor. Notice must in all cases be given him except in case of waiver. A surety is preferable to a guarantor because acts which might discharge a guarantor will not discharge a surety, and a guarantor is preferable to an endorser for the same reason. In case of a surety the creditor may sue the surety at once; in guaranty he cannot.

CASES.

(Give reasons for answers.)

1. A agreed to build a house for B after certain plans and specifications. Subsequently B became dissatisfied with A's responsibility, and through B's solicitations C endorsed on the contract made by A and B the following: "I hereby guarantee the performance of the within contract. C." Is C liable on his guaranty?[723]

2. A trust company gave a bond to the Merchants' Bank for the faithful performance and personal conduct of B as its cashier. The bank engaged in buying and selling grain as a speculation. B was entrusted with the handling of the money for these speculative investments, and having embezzled $8000 of the bank's money, the trust company was sued on its bond to make good the loss the bank had sustained. What is its liability?[732]

3. A guarantor was sued on a contract which he executed for B's faithful performance for

one year of his duties in a position of trust. At the expiration of the year B embezzled money belonging to his employer. Is the guarantor liable for B's misconduct?[727]

4. A agreed to build a warehouse for B and to have it completed within one year. The performance of this contract was guaranteed by C. It was found that A could not complete the building within a year, and it was agreed with B that the latter was to extend the time for completion one month, and that A should forfeit $500 for extension of time thus granted him. A absolutely failed to complete the building in the time thus agreed upon. Is the guarantor liable?[732]

5. The Fidelity Trust Co. guaranteed the faithful performance of B as paying teller of the First National Bank for one year. Two months after B entered upon his duties as teller he embezzled $3000. The bank having discovered the embezzlement, made an agreement with B that if he made good the amount they would not prosecute him and would still allow him to retain his present position. At the end of the year the company renewed his bond for his personal integrity and honesty, not having any knowledge of B's misdoings. In the second year B again embezzled $12,000 of the bank's money. The bank sued the Fidelity Trust Co. to make good the money B had appropriated for himself. Is the company liable on its bond?[733]

GENERAL REVIEW QUESTIONS.

1. Define guaranty. 2. Who is a guarantor? 3. What is the difference between the liability of a guarantor and a surety? 4. May a contract of guaranty be oral? 5. What is meant by subrogation? 6. When is a surety entitled to contribution? 7. What is a continuing guaranty? 8. Define guaranty of payment. 9. What is a guaranty of collection? 10. What is the difference between the liability of a guaranty of payment and of collection? 11. When will the consideration that supports the contract between the creditor and debtor be sufficient to support the contract of guaranty? 12. How may a surety be discharged? 13. When will an extension of time release a surety or guarantor? 14. What is the difference between a surety, guarantor and endorser?

CHAPTER XLVII.

FIXTURES.

735. **Definition.**—A fixture is a chattel that is annexed to real property in such a way as to become a part of it. Whether what is annexed is to be considered permanent and intended to become a part of the realty depends upon the intentions of the annexer, which intention is to be inferred from his relation to the land, from the mode of annexation and from the appropriation of the chattel to permanent use on or with the land.

736. **The Right to Remove Fixtures.**—How to determine what are fixtures, and the right to remove them, is the only question for consideration in a work of

this nature. The question as to the exercising of the right of removal arises between landlord and tenant, vendor and vendee, mortgagor and mortgagee. Permanent ownership implies permanent improvements; therefore, chattels annexed to land by the owner are presumed to be permanent and a part of the realty. Temporary possession implies temporary improvements; therefore, improvements made by a tenant are presumed to be only temporary. A tenant, therefore will be permitted to remove improvements which he has made to the property, while a vendor will not be. But the tenant cannot remove the improvements if it will result in injury to the property, neither is he entitled to compensation from the landlord for the improvements he has made.

737. **Degree of Annexation.**—The old cases invariably hold that it is necessary that there should be some physical annexation of the chattel that it may become a part of the realty, but later cases hold that there need not be actual annexation; that a constructive annexation is sufficient to show that it was considered to be permanent and a fixture. Keys to a house or fences on land are illustrations of constructive annexation. Physical annexation is only evidence to show that there was an intention to make it permanent.

738. **If the Chattel Be Permanently Annexed, and Its Removal Would Injure the Property, It Cannot Be Taken Away.** -The following cases show that articles may be fixtures and still not be permanently annexed to the realty. Gas and water pipes running under the floors and walls of a house are non-removable fixtures, but gas and water pipes fastened to the walls by means of hooks, and passing through holes in the floor, are removable when erected by the tenant. Chandeliers, burners and gas fixtures attached to the pipes by means of screws, etc., are generally removable. Such articles are considered as necessary furniture like carpets and pictures, but in the sale of a house, as it stands ready for occupancy, the gas fixtures will be included unless reserved. Stoves and furnaces put up in the usual way are removable by the party erecting them, but when built in the brickwork or chimneys they are fixtures, and not removable. In the sale of a saw-mill chains used in drawing up logs, which could be hooked and unhooked at pleasure, were held to be a part of the mill, being essential to its use as such. An organ built in the recess of a church, left for that purpose and nailed to the floor, the removal of which would destroy the architectural design, is a fixture and passes with the sale of the building. A church bell in a temporary framework alongside of a church, that would be used until the edifice would be ready for the reception of the bell, is a fixture, and not subject to execution as personal property. Rails lying along the line of an intended fence are considered as a part of the realty. Boards in a barn, and used as a permanent flooring, and iron posts placed on the land for the purpose of building fences, cannot be seized as personal property. Poles used for the cultivation of hops are a part of the

realty, although lying piled upon the ground. Rail, spikes, ties, etc., brought on the property and designed to be attached to the soil are fixtures. Engine, boilers, burrs and mill iron brought to the mill are fixtures although not actually attached to the land, and cannot be seized upon execution. The signboard of a hotel, formerly hanging outside, and afterwards removed and fastened to the wall of a room by spikes, is a permanent fixture.

739. **Machinery.**—The question is often asked, "What machinery may be removed from the premises when property is sold or mortgaged?" It is not necessary that the machinery be actually annexed to the freehold. It may be made a part of the realty by appropriation. Troughs, duplicate pumps, slate-dressing machines, all visible on the property at the time of the sale, pass with the purchase, and cannot be removed by a vendor. Process kettles resting on a foundation under the floor, gasoline pots on brick foundations, which are necessary for the business for which the building was erected, are parts of it. Ponderous machines, kept in position by their own weight, are fixtures, and not removable. Casks, hogsheads and tubs, not fastened, are fixtures, if they are too large to pass out of any opening in the building. Loose tools about the premises are not considered fixtures.

740. **Landlord and Tenant—Trade Fixtures.**—The general rule is that all trade fixtures are removable. By trade fixtures we mean fixtures that are put upon the property for the purpose of carrying on trade. A tenant being a temporary occupant, his erections are presumed to be made, not for the benefit of the real property, but for the better enjoyment of his possession. If the tenant give up possession of the property in as good condition as when he took possession the landlord has no reason for complaint. The following strongly illustrate the extent to which the doctrine of the removal of fixtures has been carried:

741. **Fixtures as Between Vendor and Vendee, Mortgagor and Mortgagee.**—When real property is sold or mortgaged the fixtures pass to the vendee or mortgagee, although the articles were annexed and used for the purpose of trade, manufacture, domestic use or ornament. The purchaser or mortgagee is clearly entitled to everything which has been annexed for the purpose of increasing its value or adapting it to the purpose for which it is used, and within this principle it has been held that bathtubs and pipes in a dwelling and counters in a store, etc., are fixtures, and not removable. Mirrors set in the walls, so as to become a part of them, are permanent fixtures. These rules as to the removal of fixtures may be changed or annulled by an agreement between the parties, but where no agreement is entered into concerning them the rules as laid down prevail.

[742]A wooden dwelling-house, two stories high, with a cellar of stone and a brick chimney, erected by the tenant for the purpose of carrying on his business as a dairyman, may be removed by the tenant as a trade fixture. Likewise, a

carpenter shop resting on blocks, and erected by a tenant, is a trade fixture, and so is a bowling alley. An icehouse on sills set in the ground, and a water tank with a sink, put up by the tenant of a hotel, may be taken away. Platform scales, counters, shelves and partitions are removable as trade fixtures. [743]But if the mode of annexation be such as to indicate permanent improvement, or if the removal will cause permanent injury to the freehold, then the articles cannot be taken away. Thus, a conservatory added to a house by a tenant, being of a permanent character, the removal of which would greatly injure the property, cannot be taken away, nor can a summer-house, which has been occupied as a dwelling, nor glass put in windows.

744. **When Tenant Must Remove Fixtures.**—The tenant, as a rule, must remove his fixtures before the expiration of his lease. If he abandon possession he cannot re-enter the premises and take away his chattels, because if he leave without removing them it is presumed that he has given them to the landlord.

745. **Remedies for the Protection or Recovery of Fixtures.**—An injunction will be granted to restrain a tenant, vendor or mortgagor who is in possession from severing fixtures. Replevin also lies to recover fixtures wrongfully removed.

CASES.

(Give reasons for answers.)

1. A rented a hall for dwelling purposes, and put in several partitions dividing it into rooms. At the expiration of the lease what are A's rights as to removing the partitions?[738]

2. In Case No. 1, if the right of removal be denied A, can he recover from the landlord the expense of putting in the partitions?[736]

3. A sold a farm to B, and before giving up possession claimed the right of removing a wind pump which he had erected only the day before the sale. Who has a right to the pump?[741]

4. A rented a building of B and put in gas fixtures and ran steam pipes along the walls fastened by hooks for the purpose of heating the rooms. A number of holes were bored in the floor and walls to insert the pipes. Has A a right to take away the improvements when he vacates?[742, 743]

5. A rented a storeroom and put in counters, shelves, offices, etc., for the purpose of carrying on a business as a dry goods merchant. The counters and offices were nailed to the floor and the shelving securely fastened to the walls. Has the tenant a right to remove the fixtures when he vacates the property?[740]

6. In Case No. 5, what effect does the degree of annexation have upon the tenant's right to remove the fixtures?[743]

7. A, who conducted a retail clothing business in a store which he owned in fee, sold it to B. B claimed the fixtures that were in the building which had been used by A. A denied this right, and claimed the fixtures as his, as he expected to open another store. To whom do the fixtures belong?[738, 741]

8. A put valuable stained glass windows in a house which he had rented from B for a term of years. At the expiration of the lease what are the tenant's rights as to removing the stained glass window panes?[741]

GENERAL REVIEW QUESTIONS.

1. What is a fixture? 2. To what degree must a chattel be annexed in order to constitute it a fixture? 3. What is meant by a constructive annexation? 4. What are trade fixtures? 5. What is the rule as to the right of a tenant to remove trade fixtures? 6. What right has a vendor to remove fixtures? 7. Why is a tenant allowed greater privileges to remove improvements he has made than a vendor? 8. When must a tenant exercise his right to remove fixtures?

CHAPTER XLVIII.

BAILMENTS.

746. Definition.—Bailment embraces all cases in which the owner of personal property places it in the hands of another for some special purpose. These special purposes include borrowing, lending, letting, hiring of things and services. The person who gives up the possession of the property is called the *bailor*, and the person receiving the property is called the *bailee*. Merely the *possession*, and not the *ownership* of the property is transferred. The subject is divided into five specific classes; 1. Deposit; 2. Mandate; 3. Loan for use; 4. Pledge; 5. For hire.

747. Deposit.—Whenever a person receives property from another, and agrees to care for it, and then returns it to the owner without receiving compensation for the care bestowed upon the property, it is called a deposit. B stored a part of his household goods in C's house. C, not making any charge for this service, creates a bailment by deposit. Holding the property for the sole benefit of the bailor gives the bailee the right to terminate the bailment whenever he desires. If the bailor fail to take possession of the chattels when so directed the bailee may remove them from his premises regardless of the result to the property. Thus, in the above illustration, if B refuse to remove his household goods stored in C's house when so ordered C may place the goods in the street, and if they be stolen or destroyed he will not in any way be liable. This kind of bailment, being for the benefit of the bailor, the holder of his property need exercise only slight care, and is liable for only gross negligence. If C had agreed to store B's household goods, and instead of doing so, had let them remain in his yard

unsheltered, he would be liable to B for damages to the goods, because it was gross negligence on his part. The bailee has no right to use the property, except when it is necessary for its preservation, and when returned if must be with all its increase, viz., animals with their young.

748. **Mandate.**—In mandate or commission the bailee agrees to bestow some labor or service, without compensation, upon the property received. The principal and really the only distinction between a deposit and a mandate is that in the former keeping the property is the principal feature, while in the latter performing some service upon the property bailed is the essential requisite. In both bailments the service of the bailee is gratis, and the bailee is liable only for gross negligence. A, learning that B was going to the city, gave him $200 to pay his note due at a bank. While on his way B was robbed of A's money, also $150 of his own. B was cautious and careful of the money entrusted to him. He is not liable to A for the loss, because he exercised as much care over A's money as he did his own, and, therefore, was not grossly negligent.

[749]While a bailee in this class of bailments is not liable to the bailor for nonfeasance, yet he is liable for malfeasance. A agreed to paint B's buggy free of charge. Subsequently he refused to do so. This does not make him liable for breach of the agreement. But had A used the buggy and broken it he would be liable for the damages.

750. **Liability for Non-Performance.** But it is quite generally held that if the bailee enter upon a discharge of his trusts he will be bound to execute it or pay damages. Notwithstanding that the services are gratuitous, yet the delivery of the thing bailed is a sufficient consideration to require the bailee to perform his agreement when once he undertakes it.

Thus, if A had partially painted B's buggy, and then refused to finish it, he would be liable to B; or if A agree to deliver an important letter or message for B, which B gives him, and he neglects to do so because it would put him to some inconvenience, he will be liable to B for the damages he may sustain.

751. **Loan for Use.**—A loan for use is the delivery of property by one person to another to be used by him for his own personal benefit. This class includes all gratuitous loans. It being for the sole benefit of the bailee, he is required to exercise the highest degree of diligence, and is liable for the slightest negligence. F, wishing to make a display of jewelry at an exposition, and not having a sufficient supply of his own, borrowed several valuable diamonds of G. The jewelry was placed in a burglar-proof safe, made especially for the purpose. Robbers blew open the safe and carried off the jewelry. F need not incur the loss, because it was not due to any neglect or want of proper care or diligence on his part.

752. **How to Be Used.**—The thing borrowed must be used for the purpose for which it was loaned. This rule is most rigidly enforced. If the thing be used in

any other way, or for any other purpose than that for which it was obtained, the bailee must make good the loss. A borrowed B's horse and buggy to drive to a certain place. He tied the horse in the usual way to a hitching post. The horse became frightened, broke loose and ran away. The carriage was demolished and the horse injured. A need not make good the loss. The owner is the loser. But had A driven to some other place, though he might have used the same degree of care and diligence, he would have been liable, because he disregarded the purpose for which he borrowed the horse and buggy. The borrower has a right to the use of the property for the time for which it was borrowed, even though the lender make a request for its return before the expiration of that time. For instance, M borrowed D's wagon for ten days. In a couple of days after it was loaned D wanted to use it and asked M to return the wagon. M may keep the wagon for the full time of the bailment.

753. **Pledge.**—It is a pledge when one party gives personal property to another to hold as security for the payment of some debt or performance of some act. The person transferring possession is called *pledgor;* the person receiving it, *pledgee.* This is what may be termed a collateral security. Anything that is personal property may be pledged.

754. **Duty of Pledgee.**—The pledge being for the benefit of both parties, the pledgee is required to use only ordinary care. The pledgee is not entitled to use the property if its use will lessen its value. Thus, if an overcoat be pledged to secure the payment of a debt, the pledgee would have no right to wear it. But if a horse be pledged it should be used sufficiently to keep it in health.

755. **Right to Sell.**—The pledgee has a right to retain possession of the property pledged until the debt be paid, but he cannot hold the property to cover debts other than those for which the pledge was made. If the debt be not paid when due the pledgee may either sue on the debt or sell the property. The property is not forfeited to the pledgee. He must notify the pledgor to redeem the property by paying the debt, or otherwise it will be sold. If, after giving a reasonable time, the debt be not paid, the holder may sell the property at public auction. He should be sure that it is an open and fair sale. Or, if he prefer, he may file a bill in equity asking for a foreclosure, leaving the sale in the hands of the court. Therefore, after default by the pledgor, the pledgee may either sue on the debt, sell the property at public auction, or have it sold by the court through its officers. When notes are pledged they cannot ordinarily be sold. The pledgee must wait until maturity of paper, and then collect on the note in the usual way.

[756]B gave C his note at thirty days for $500, and a pair of horses and buggy to hold as security. The note not being paid at maturity, C, without giving any notice to B, sold the horses and buggy for $300, while they were worth at least $600. Subsequently, B tendered $500 in settlement of the note, at which time

he was informed that the horses and buggy had been sold. C must make good to B the value of the property, for he had not given the required notice. Had C notified B that he would sell them if the note were not paid within a certain time, and had accordingly made the sale, he would not have been liable to make good the value of the pledge, for it was in conformity with the requirements of the bailment.

757. Pawnbrokers.—The business of a pawnbroker comes under this head, which is regulated entirely by statute. One of the main provisions which is universal is that the pawnbroker must make a report to the police department every day at noon of all the property that was pledged with him the previous twenty-four hours. They must not only describe the property, but give a full description of the person who pledges the property. This is done to assist the officers in locating stolen goods.

758. Bailment for Hire.—Bailment for hire includes all transactions where property, labor, services or care of property is hired of another for a consideration. This is the most important branch of bailments, as it is the one commonly represented in business affairs. It is divided into the following classes: 1. Hire of things; 2. Hire of services; 3. Hire of custody; 4. Hire of carriage.

759. Hire of Things.—Hire of things is the hiring by one person of the personal property or chattels of another for a compensation. The hiring of a horse and buggy of a liveryman represents this class. If the hirer use the property for any purpose other than that for which it was hired he will be liable for any loss or damage.

[760]A hired a pair of horses and buggy of a liveryman to drive to a certain city. He, instead, hitched the horses to a heavy wagon, loaded with grain, and drove them to the same city that he intended to drive them in the carriage. Not being used to heavy hauling, one of the horses injured himself and became forever afterwards absolutely worthless. The hirer must make good the loss. Had the horses given out while driving them in the carriage, or sprained themselves in some way, the hirer would not have been liable. [761]The thing hired must be returned to the letter in as good condition as when received, excepting ordinary wear and unavoidable accidents. If a buggy spring or axle should break the loss falls on the owner or letter. In case of animals, if a horse should be taken sick the hirer should employ a veterinary doctor, and his expense would have to be borne by the letter, for there is an implied promise in all these cases that the thing hired is capable of doing that for which it was hired.

762. Hire of Services.—When one delivers property to another to have some work done upon it for a compensation it represents a hire of service. Leaving a suit of clothes with a tailor to have cleaned and pressed is an illustration of this class. This differs from mandate in that the bailee's service in a mandate is gratis, while in a hire for service his services must be paid for.

763. Workman's or Bailee's Duties.—The workman may employ others to do the work for him, provided it was not his own personal skill and service that was contracted for. B employs a noted artist to paint a picture on valuable material furnished by himself. The artist has the work done by one of his students. B need not accept the painting, and can compel the artist to pay him for the materials furnished.

764. Skill Required.—The workman must possess the necessary skill to perform that which he undertakes, and if he does not he will be liable for damages. A, whose occupation is that of a blacksmith, represented himself to be a piano tuner, whereupon B let him tune his piano. B could not replace a number of the pieces which he removed, and otherwise damaged the piano. B is not only civilly liable to make good A's loss, but also criminally liable for obtaining money under false pretenses. The workman may retain possession of the property until his services are paid for.

765. Hire of Custody.—A hire of custody embraces cases where one person engages another to keep his goods. The principal element is the custody of the goods. The bailee has no work or labor to bestow upon them. The bailee is required to use only ordinary care, as it is for the benefit of both parties. A stores his household goods in B's warehouse, and for this privilege pays $4 a month. The warehouse and contents are destroyed by fire. A must bear the loss unless he can show that the fire was caused by B's carelessness. Going through the building with a lighted cigar would be carelessness, which would make the warehouseman liable in case of fire. Should the warehouseman deliver the goods to anyone other than the right party he will have to make good the loss.

766. Recapitulation.—It is very essential that the student bear in mind the degree of care that is required of the bailee in the different bailments. In a Deposit and Mandate the bailor receives all the benefit; therefore, the bailee need exercise only slight care, and is liable only for gross negligence. In Loan for Use the bailee receives all the benefit; therefore, he must exercise the greatest care, and is liable for the slightest neglect. In Pledge and Bailment for Hire both parties are benefited; therefore, the bailee is required to exercise ordinary care, and is liable for ordinary negligence.

CHAPTER XLIX.

COMMON CARRIER.

767. Definition.—Where one holds himself out to carry the goods of all persons indifferently he will be considered a common carrier, and will incur the liability of that character. Of this description are railroads, ships, express

companies, ferrymen, wagoners and teamsters transporting goods as a public employment.

768. General Duties and Liabilities.—A common carrier must convey the goods of any person offering to pay his hire, unless his carriage already be full or the risk sought to be imposed upon him be extraordinary, or be such as he is unable or unaccustomed to assume. A railroad company is liable for refusing to receive goods without a valid excuse. A common carrier stands in the same position as an insurer of property, and is liable for every loss or damage to it while in his custody, no matter by what cause, unless it were by "Acts of God," such as storms and floods, or the public enemy. Public enemies means persons who owe allegiance to a country that is at war with ours, and not highway robbers and burglars. Even his entire faultlessness does not excuse him. Thus, he is liable for accidental fire or robbery. His liability continues until delivery, which must be within a reasonable time after the goods reach their destination. Delivery must be to the right person, and if not so delivered the common carrier is liable, even though the consignee's address was erroneously given. If the consignee refuse to take the goods, the carrier immediately notifies the consignor to that effect, and asks for instructions as to what disposal to make of them.

769. Liability Limited by Notice. It is now well settled that a common carrier may limit his liability by express agreement as insurer of the property intrusted to him. But when the notices are given by advertisements in the newspapers, by the posting up of placards or printing them on the back of a bill of lading, they are generally regarded as insufficient. It is generally held, however, that the shipper, by accepting a bill of lading, makes the conditions printed on its face a part of the contract, and is bound thereby.

770. Cannot Limit Liability for Negligence.—The courts construe these contracts as only exonerating the carrier from liability from loss or damage not caused by his own fault, for if he be guilty of misconduct or gross negligence, he is chargeable with the loss occasioned thereby, and the contract will not permit him to escape his responsibility. Therefore, a common carrier cannot by any means exonerate himself from liability for loss caused by negligence of his own or of his servants.

771. Duty to State Value of Goods.—The bailor is not bound to state the value of goods unless inquiry be made; then it must be given. Railroad companies usually limit their liability for the loss of trunks and parcels to $100. And a provision that a carrier will not be liable beyond a certain amount, unless the true value be disclosed, is enforceable. If there be any fraud or unfair concealment whereby his risk is increased or his vigilance lessened it will exempt the carrier from responsibility.

772. Connecting Carriers.—Where goods are delivered to a carrier and

marked for a destination beyond his own line, without any direction as to their delivery, he is bound only to deliver them at the end of his line. Neither is he bound to receive and carry the goods beyond his line; but if he do agree to do so, the other carriers are his agents, and he is alike responsible for loss or damage on their lines as well as his own.

773. **Carriers of Passengers.**—Common carriers of passengers are not permitted to discriminate against a particular person, class or race. They must carry all persons who offer their tickets for passage, unless they be afflicted with some contagious disease, or otherwise be in a condition unfit for transportation. The carriers of passengers are not held to as strict an accountability as carriers of merchandise. They are, however, liable for any injury to passengers caused by their own or their servants' neglect. Common carriers have, however, a right to adopt rules and regulations for the carriage of passengers, and should they violate them it is at their own risk. Railroad companies, having invited the public to take passage on their cars, owe protection to passengers from insults and indignities on the part of others. The conductor of a passenger train violates the train dispatcher's orders, which causes a collision. Notwithstanding the act of the conductor was willfull on his part, the railroad company is liable for any damage or loss of life.

CASES.

(Give reasons for answers.)

1. A and B were farmers. A allowed B to store his farming implements in his barn, which, with all its contents, was burned. The fire was caused by A's throwing a lighted match on the barn floor, which immediately ignited. What remedies, if any, has B?[747]

2. A doctor who gratuitously rendered surgical aid to parties who had been injured in a wreck was sued for malpractice. What is his liability?[704]

3. A left a pair of shoes with B to have repaired. They were stolen from B's shop. Who must bear the loss?[762, 766]

4. A hired a dress suit of B. A was caught in the rain and the suit ruined. Who must bear the loss?[759]

5. B shipped her piano to Denver, Col., over the B. & O. R. R. It went through the hands of three different transportation companies. When delivered the piano was much injured, due to rough handling. Who is liable for the damages?[768, 770]

6. A hired B's buggy to drive to a certain city. While driving at a rapid pace he ran into a rut and broke the axle. Who is responsible?[760, 766]

7. D borrowed $175 of B, and gave his diamond ring as security. What procedure must B take to make good his claim out of the pledge?[755]

8. A gives his watch to B to keep for two weeks. B makes no charge for this service. B put A's watch in the bureau drawer, where he kept other valuable jewelry of his own. The watch was stolen. Who must bear the loss?[747]

9. A sold his household goods to B, and represented that the storage on them was paid.

The storage, in fact, was not paid, and the warehouseman refused to let B have the goods until he paid the storage. What are B's rights and liabilities?[765]

10. A merchant lost a large shipment of perishable fruit because of the failure of the railroad company to furnish him with cars by which he might ship the fruit to another city where there was a demand for it. The railroad company claimed that it was impossible to secure more cars. The merchant sued the company for his loss. Can he succeed?[768]

11. A hired B's horse to be used in plowing a field. The horse died from unknown causes. Is A liable to B for the value of the horse?[760]

12. In case No 11, had A used the horse to drive to a certain city, would his responsibility be the same?[760]

GENERAL REVIEW QUESTIONS.

1. Define Bailment. 2. Bailments are divided into how many classes? 3. What is meant by a Deposit? 4. Define Bailment by Mandate. 5. What is the liability of the bailee in Deposit and Mandate? 6. If the bailee enter upon a performance of the bailment, is he required to finish it or pay damages? 7. What is a transaction called when property is delivered by one person to another, to be used by him for his own personal benefit? 8. In such a case, what is the liability of the bailee? 9. How must the thing borrowed be used by the bailee? 10. What is meant by a Pledge? 11. What may be pledged? 12. What is the duty of the pledgee? 13. May he use the property? 14. What are the three remedies which the pledgee has for realizing on the pledge? 15. What is meant by Bailment for Hire? 16. Define Hire of Things. 17. What is the liability of the bailee in this class of transactions? 18. What is meant by Hire of Services? 19. What is the duty of the workman or bailee? 20. What remedy has the workman to enforce payment for his services? 21. What is Hire of Custody? 22. Who are Common Carriers? 23. What are the General duties and liabilities of a Common Carrier of merchandise? 24. Can Common Carriers by agreement limit their liability for damages caused by their own negligence? 25. Is a Common Carrier obliged to deliver goods beyond his own line of transportation? 26. Is a Common Carrier liable for damages to the goods caused by another company to whom the goods were delivered for transportation?

APPENDIX—STATE LAWS.

Statutory Provisions. Rights and liabilities arising out of commercial transactions are, in the absence of statute, regulated by common law; but statute law has, in modern times, greatly modified many of the common law rights and liabilities. While the general provisions of the statutes are similar in many of the states, in others they differ widely. Therefore, the purpose of this Appendix is to set forth in a brief and concise form the substance of the statutes. These special provisions, taken from the statute books of the various states, may be classified under the following defined terms:

Statute of Limitations. By the rule of the common law, one who had legal grounds of complaint against another might suit his own convenience as to when he would call upon the latter to answer. But this rule proved to be productive of very great inconvenience and, not infrequently, of great injustice. The states have, therefore, regulated by statute the time within which an action or suit at law may be instituted. The periods of limitation must be computed from the time the right to sue accrues. The length of the periods varies according to the nature of the action or claim. For example: in New York an action on contract must be begun within six years; an action to recover damages for a personal injury resulting from negligence, within three years; libel, slander, assault, etc., two years; and still other actions must be commenced within one year. If the action is not begun within the period prescribed by law, the claim is said to be "outlawed." A statute defining the time within which an action must be commenced is known as a "statute of limitation."

Stay of Execution. After a judgment is rendered against a defendant, who is then known as a judgment debtor, the judgment creditor may proceed to have the property of the judgment debtor sold to satisfy the judgment. In some states this procedure may be begun at once; in others, by giving a suitable bond, the debtor may secure a delay or postponement of the sale of his property. This is known as a "stay of execution."

Exemptions. While the enforcement of the creditor's judgment is by sale of the property of the judgment debtor, yet the law wisely provides that the debtor may retain a portion of his property free from execution. This right is known as "exemption." The common law allowed the debtor only the necessary wearing apparel. It was once held in an old English case that, if the defendant had two gowns, the sheriff might sell one of them. But in modern times a considerable amount of property, both real and personal, is exempted from execution (sale by the sheriff) by the statutes of the several states.

If the debtor is without property, the creditor may attach money due the defendant in the hands of a third party, *i. e.*, attaching the salary of defendant. This process is called "garnishment." In case of attaching salary, only a certain portion, or the excess over a certain amount can be garnished. This is regulated entirely by statute.

Negotiable Instruments Law. (See Par. 298, p. 44.) This is a statute making the law applicable to negotiable paper uniform in all states in which it has been adopted. Up to January 1, 1907, a majority of states have adopted it. The act in no way controls the law relating to non-negotiable paper. It sets at rest many controverted questions. It declares that additional stipulations relating to attorney and collection fees, exemptions, etc., shall not destroy the negotiable qualities of a commercial instrument otherwise negotiable. Further, that an antecedent debt shall be a sufficient consideration to constitute one a holder in due (regular) course; that a material alteration will not discharge the maker or acceptor, but that, as to a holder in due course, he shall be liable according to the original tenor of the instrument; that nondelivery by the maker or acceptor of a completed negotiable instrument is not a good defense, as against a holder in due course; that an oral acceptance is invalid; that a seal shall not affect the negotiability of the instrument, and that the obligor no longer pays an instrument conditionally indorsed at his peril. These are a few of the more important questions that are settled by the act.

Statute of Frauds. This is an old English statute requiring certain contracts to be evidenced by some written memorandum. Its essential provisions have been adopted in most of the states. The part of the statute relating to the sale of goods, wares or merchandise has received greater modification than any of the other provisions. The English statute provided that if the sale

amounted to ten pounds sterling or more, the contract could not be enforced unless there was a part delivery and acceptance, or part payment or something given in earnest to bind the bargain, or unless some note or memorandum were made and signed by the party to be charged. The ten pounds sterling represents about $48.86 in legal tender of the United States. The majority of the states have set the amount at $50; others, at any value, and in some few states, this part of the statute has never been enforced.

Interest. This term represents money paid for the use of money. The rate is fixed, either by law or by contract. The legal rate will prevail in the absence of express stipulation. Some states allow by contract a rate of interest in excess of that established by law; other states do not. When the rate of interest agreed upon is in excess of the legal or contract rate, it is said to be usurious, and the effect of a usurious rate upon the contract varies in the different states, as shown under this head in the laws of the states.

Rights of Married Women. Under this head we shall give the statutory regulations as to the rights of married women. At common law a married woman had no contractual capacity. She could not bind herself by contract in any form, even for necessaries, except when living apart from her husband. Her personal property was vested in her husband, and he could dispose of it as if he had acquired it. This arose from the principle that they were considered as one person in law. These common law disabilities arising out of coverture have been greatly modified by statute.

Chattel Mortgages. A chattel mortgage is a conditional sale of a chattel as security of a debt or the performance of some other obligation. Independently of statutes, a delivery is necessary to the validity of a chattel mortgage, as against creditors. The registration statutes simply provide a substitute for change of possession. Between the parties a change of possession is unnecessary. If there is a change of possession, registration is not required. The rights of parties interested in the mortgaged property are regulated almost wholly by statute, and are quite uniform in all states.

LAWS OF ALABAMA.

STATUTE OF LIMITATIONS. *Stated or Liquidated Account*—6 years; *open account*, 3 years from date of last item or from time when, by contract or usage, the account is due. *Commercial Paper*—6 years; if under seal, 10 years. *Judgments*—Court of record, 20 years; justice of peace, 6 years.

EXECUTION. Judgments in *court of record*, no stay; in *justice of peace court*, stay of 30 days if amount is less than $20 and 60 days if more than $20 by giving bond to plaintiff in double the amount of the judgment.

EXEMPTIONS. *Personal Property*—$1000, unless waived in writing. *Homestead*—Land with the improvements not exceeding $2000 in value; may be waived by separate written instrument. *Wages*—Of residents, $25 per month; of deceased employee, $100 in favor of widow or minor child.

STATUTE OF FRAUDS. Not in force as to the sale of goods, wares and merchandise. Other essential features have been adopted.

INTEREST. Legal rate by statute 8 per cent; by contract 8 per cent. *Usury* works forfeiture of the interest.

NEGOTIABLE INSTRUMENTS LAW. Not adopted.

RIGHTS OF MARRIED WOMEN. Same as if a femme sole, except that she cannot convey or mortgage her realty or waive homestead rights without husband joins in. She cannot become surety for her husband. Married women over 18 are relieved of disabilities of minority. *Dower Rights*—If no descendants and not insolvent, life estate in one-half; if insolvent, life estate in one-third; if she has separate, value of same is to be deducted from dower. *Distributive Share of Husband's Personality*—If no children she takes all; if but one child, one-half. Her share may be affected or wholly barred by her statutory separate estate.

CHATTEL MORTGAGES. Void against creditors and purchasers without notice. Must be recorded in office of judge of probate in county where mortgagor resides and in county where property is at date of mortgage. If removed before mortgage is satisfied, must be again recorded in county to which property is removed.

LAWS OF ARIZONA.

STATUTE OF LIMITATIONS. *Accounts*—3 years. *Commercial Paper*—5 years. *Judgments* 5 years.

EXECUTIONS. No stay is granted.

EXEMPTIONS. *Personal Property* $1000. *Homestead*—To the value of $6000. Must be recorded. *Wages* Earnings for 30 days next preceding levy.

STATUTE OF FRAUDS. All contracts for the sale of goods, wares and merchandise must be in writing. Other essential features have been adopted.

INTEREST. Legal rate by statute, 6 per cent; by contract, no limit.

NEGOTIABLE INSTRUMENTS LAW. Adopted 1901.

RIGHTS OF MARRIED WOMEN. Same as a femme sole after age of 18. *Dower*—If children widow gets life estate in one-third. If no children widow gets one-half absolutely. If no children and no surviving father or mother widow gets all. Community property goes to survivor unless there are children, when one-half goes to survivor. *Distributive Share of Husband's Personalty*—If there be children widow gets one-third. If no children widow gets all.

CHATTEL MORTGAGES. Void as to subsequent parties without notice. Must be recorded with county recorder where property is situated and where mortgagor resides, if resident. If property is removed to another county must be recorded within one month.

LAWS OF ARKANSAS.

STATUTE OF LIMITATIONS. *Accounts*—3 years. *Commercial Paper*—5 years. *Judgments*—10 years.

EXECUTION. In all courts a stay is granted for 6 months.

EXEMPTIONS. *Personal Property*—Head of family, $500; to others, $200. *Homestead*—In country, 160 acres; in town, one-fourth acre; in each case not to exceed $2500 in value. *Wages*—For 60 days, provided same added to personalty is not more than exemption allowed.

STATUTE OF FRAUDS. Contracts for the sale of goods, wares and merchandise for $30 or over must be in writing. Other essential features have been adopted.

INTEREST. Legal rate by statute, 6 per cent; by contract, 10 per cent. *Usury* works a forfeiture of contract-principal and interest.

NEGOTIABLE INSTRUMENTS LAW. Has not been adopted.

RIGHTS OF MARRIED WOMEN. Same as a femme sole. *Dower Rights*—If children, life interest in one-third realty, and one-third personalty absolute. If no children fee of one-half of realty, not ancestral, as against all except creditors and one-third as against them. Also one-half of personalty absolute as against all except creditors and one-third as against them. If ancestral one-half for life except as to creditors and one-third as to them. *Distributive Share of Husband's Personalty*—If personal estate does not exceed $300 widow and children get all.

CHATTEL MORTGAGES. Void as to subsequent parties without notice. Must be filed and recorded in the office of the recorder where the mortgagor resides.

LAWS OF CALIFORNIA.

STATUTE OF LIMITATIONS. *Accounts*—2 years. *Commercial Paper*—4 years. *Judgments*—In courts of record, 5 years; in justice of peace courts, 2 years.

EXECUTION. No stay.

EXEMPTIONS. *Personal Property*—Specified articles. *Homestead*—Head of family, $5000; others, $1000. Declaration must be recorded. Can be abandoned only by declaration which must be recorded. *Wages*—30 days if necessary for the support of resident family. Wages of seamen, $300.

STATUTE OF FRAUDS. Contracts for the sale of goods, wares and merchandise for $200 and over must be in writing. Other essential features have been adopted.

INTEREST. Legal rate by statute, 7 per cent; by contract, no limit.

NEGOTIABLE INSTRUMENTS LAW. Has not been adopted.

RIGHTS OF MARRIED WOMEN. May become sole trader by judgment of superior court and is limited in her investments to $500. She has absolute control of her separate property. *Dower Rights*—Dower has been abolished, the following statutory provision being substituted therefor: One child surviving, widow gets one-half of realty and personalty; more than one child surviving, widow gets one-third of realty and personalty; if no children, father, mother, brother or sister, or children or grandchildren of brother or sister, widow takes all.

CHATTEL MORTGAGES. Void as against subsequent parties without notice. Must be recorded where mortgagor resides and also where the property is located; if property be removed it must be recorded within 30 days.

LAWS OF COLORADO.

STATUTE OF LIMITATIONS. *Accounts*—6 years. *Commercial Paper*—6 years. *Judgments*—In courts of record, 20 years; in courts not of record, 6 years.

EXECUTION. In *courts of record*, stay for a reasonable time if levy be on personal property; in *justice of peace courts*, no stay.

EXEMPTIONS. *Personal Property*—Specified articles. *Homestead*—To the amount of $2000; must be recorded. *Wages*—60 per cent of wages due.

STATUTE OF FRAUDS. Contract for the sale of goods, wares and merchandise for $50 and over must be in writing. Other essential features have been adopted.

INTEREST. Legal rate by statute, 8 per cent; by contract, no limit.

NEGOTIABLE INSTRUMENTS LAW. Adopted in 1897.

RIGHTS OF MARRIED WOMEN. May become a sole trader. Can convey property without consent of husband, but cannot bequeath more than one-half of it. *Dower Rights*—Dower has been abolished, the following statutory provision being substituted therefor. If there be children, the widow gets one-half of realty and personalty. If no children, widow gets all.

CHATTEL MORTGAGES. Void as to subsequent parties without notice. Must be recorded with the county clerk where property is located.

LAWS OF CONNECTICUT.

STATUTE OF LIMITATIONS. *Accounts*—6 years. *Commercial Paper*—6 years; if non-negotiable, 17 years. *Judgments*—No limit.

EXECUTION. No stay.

EXEMPTIONS. *Personal Property*—Specified articles. *Homestead*—To the value of $1000; must be recorded. *Wages*—$50.

STATUTE OF FRAUDS. Contracts for the sale of goods, wares and merchandise for $50 or over must be in writing. Other essential features have been adopted.

INTEREST. Legal rate by statute, 6 per cent; by contract, no limit.

NEGOTIABLE INSTRUMENTS LAW. Adopted in 1897.

RIGHTS OF MARRIED WOMEN. Same as a femme sole. *Dower Rights*—Life estate in one-third realty. *Distributive Share of Husband's Personalty*—If issue, widow gets one-third; if no issue or legal representative of issue, widow gets one-half.

CHATTEL MORTGAGES. Valid as to specified articles if recorded with town clerk where property is located.

LAWS OF DELAWARE.

STATUTE OF LIMITATIONS. *Accounts*—3 years. *Commercial Paper*—6 years. *Judgments*—20 years.

EXECUTIONS. *Courts of record*, stay of 6 months is granted; *justice of peace courts*, 9 months

EXEMPTIONS. *Personal Property*—Specified articles. *Homestead*—None. *Wages*—50 per cent, if resident. Married women and infants, all.

STATUTE OF FRAUDS. No provision as to the sale of goods, wares and merchandise Other essential features have been adopted.

INTEREST. Legal rate by statute, 6 per cent; by contract, 6 per cent. *Usury* makes void the contract. Any one may sue for a sum equal to the amount loaned.

NEGOTIABLE INSTRUMENTS LAW. Has not been adopted.

RIGHTS OF MARRIED WOMEN. Can own property the same as a femme sole and contract in respect to same but cannot convey without husband's consent so as to defeat his curtesy. (Rights in her property.) *Dower*—If there be a child, widow gets one-third for life, of the realty left by her husband. If no child or issue of child, one-half for life. If no child or kindred, widow gets life estate in all. *Distributive Share of Husband's Personalty*—If there be children she gets one-third absolutely; if no children but brothers and sisters, one-half, and if no kindred, widow gets all.

CHATTEL MORTGAGES. Void as to subsequent parties without notice Must be recorded within 10 days with the recorder where property is situated. Lien is good for 3 years.

LAWS OF FLORIDA.

STATUTE OF LIMITATIONS. *Accounts*—4 years. *Commercial Paper*—5 years; under seal, 20 years. *Judgments*—20 years.

EXECUTION. A stay may be granted in the discretion of the court.

EXEMPTIONS. *Personal Property*—$1000 to head of family residing in the state. *Homestead*—160 acres in the country or one-half acre in the city. *Wages*—All wages are exempt.

STATUTE OF FRAUDS. All contracts for the sale of goods, wares and merchandise must be in writing. Other essential features have been adopted.

INTEREST. Legal rate by statute, 8 per cent; by contract, 10 per cent. *Usury* works a forfeiture of all interest.

NEGOTIABLE INSTRUMENTS LAW. Adopted in 1897.

RIGHTS OF MARRIED WOMEN. She has full trading rights by license granted by circuit court judge. *Dower Rights*—Life estate in one-third realty. *Distributive Share of Husband's Personalty*—If no children or only one child, widow gets one-half; if more than one child, widow gets one-third.

CHATTEL MORTGAGES. Invalid if not recorded. Must be recorded in the office of the clerk of circuit court where the property is located.

LAWS OF GEORGIA.

STATUTE OF LIMITATIONS. *Accounts*—4 years. *Commercial Paper*—6 years. *Judgments*—7 years.

EXECUTIONS. *Courts of record*, stay of 60 days is granted; *justice of peace courts*, if judgment be under $30, 40 days; over $30, 60 days.

EXEMPTIONS. *Personal Property*—Specified articles. *Homestead*—Realty or personalty or both to the value of $1600; agricultural land, 50 acres and 5 acres additional for each child under 16 years, with improvements not to exceed $200, and in city not to exceed $500. *Wages*—All laborers' wages.

STATUTE OF FRAUDS. Contracts for the sale of goods, wares and merchandise for $50 and over must be in writing. Other essential features have been adopted.

INTEREST. Legal rate by statute, 7 per cent; by contract, 8 per cent. *Usury* works a forfeiture of excess interest.

NEGOTIABLE INSTRUMENTS LAW. Has not been adopted.

RIGHTS OF MARRIED WOMEN. Can contract same as a femme sole except that she cannot become surety for another or bind herself to pay her husband's debts. *Dower*—Life interest in one-third realty. If no lineal descendants, wife is sole heir. *Distributive Share of Husband's Personalty*—If there be children, widow gets a child's part, unless there are more than 5 when she gets one-fifth. If no lineal descendants, she gets all.

CHATTEL MORTGAGES. Void as to subsequent parties without notice. Must be recorded with clerk of superior court in county where mortgagor resides and also where property is located. If on property outside of state and property is afterwards brought into state, must be recorded within 6 months.

LAWS OF IDAHO.

STATUTE OF LIMITATIONS. *Accounts*—4 years. *Commercial Paper*—5 years. *Judgments*—7 years.

EXECUTIONS. No provision for a stay of execution.

EXEMPTIONS. *Personal Property*—Specified articles. *Homestead*—Head of family, $5000; any other person, $1000. *Wages*—For 30 days if necessary for the support of family.

STATUTE OF FRAUDS. Contracts for the sale of goods, wares and merchandise for $200 or over must be in writing. Other essential features have been adopted.

INTEREST. Legal rate by statute, 7 per cent; by contract, 12 per cent. *Usury* works a forfeiture of 10 per cent of the principal.

NEGOTIABLE INSTRUMENTS LAW. Adopted in 1903.

RIGHTS OF MARRIED WOMEN. May become sole trader by judgment of district court of the county in which she has resided for 6 months. Separate property is controlled by husband. *Dower* has been abolished. Community property prevails. Provisions have been made for support of family.

CHATTEL MORTGAGES. Void as against subsequent parties without notice. Must be filed for record with recorder of county where property is located. If goods are removed into another county it must be filed in said county within 10 days.

LAWS OF ILLINOIS.

STATUTE OF LIMITATIONS. *Accounts*—5 years. *Commercial Paper*—10 years. *Judgments*—Courts of record, 20 years; justice of peace, 10 years.

EXECUTIONS. No provision for a stay of execution.

EXEMPTIONS. *Personal Property*—Head of family, $400; others $100. *Homestead*—To the value of $1000. *Wages*—$15 per week to heads of families.

STATUTE OF FRAUDS. Not in force as to the sale of goods, wares and merchandise. Other essential features have been adopted.

INTEREST. Legal rate by statute, 5 per cent; by contract, 7 per cent. *Usury* works a forfeiture of entire interest.

NEGOTIABLE INSTRUMENTS LAW. Has not been adopted

RIGHTS OF MARRIED WOMEN. Can engage in business the same as a femme sole, except that she cannot enter into partnership without husband's consent, unless he has deserted her, is insane or in the penitentiary. Expenses of family charged upon property of both. *Dower*—Life interest in one-third realty. If no children, one-half absolutely. If no kindred, all absolutely. *Distributive Share of Husband's Personalty*—If children, she gets one-third absolutely. If no children, she gets all absolutely.

CHATTEL MORTGAGES. Invalid as to third parties unless possession is given to mortgagee or instrument provides that mortgagor shall retain possession, and it is acknowledged and recorded with recorder of the county where mortgagor resides at time mortgage is executed, or if mortgagor is a nonresident it must be recorded in county where property is situated. Is good until debt is paid if less than 3 years. May be extended for a period of 1 year after debt is due by filing affidavit within 30 days prior to maturity of debt, stating mortgagee's interest in property and the balance due upon the debt.

LAWS OF INDIANA.

STATUTE OF LIMITATIONS. *Accounts*—6 years from date of each item. *Commercial Paper*—10 years. *Judgments*—20 years, but no lien after 10 years.

EXECUTIONS. *Courts of record*—Not more than $6, 30 days; under $12, 60 days; under $20, 90 days; under $40, 120 days; under $100, 150 days; more than $100, 180 days. *Justice of the peace courts*—Not over $6, 30 days; under $12, 60 days; under $20, 90 days; under $40, 120 days; under $75, 150 days; over $75, 180 days.

EXEMPTIONS. *Personal Property (Realty)*—Every resident householder is entitled to $600 of either or both as he may elect. Married women entitled to same if she is a resident whether householder or not. *Wages*—Of householder not exceeding $25 at one time.

STATUTE OF FRAUDS. Contracts for the sale of goods, wares and merchandise for $50 or over must be in writing. Other essential features have been adopted.

INTEREST. Legal rate by statute, 6 per cent; by contract, 8 per cent. *Usury* works a forfeiture of interest above legal rate of 6 per cent.

NEGOTIABLE INSTRUMENTS LAW. Has not been adopted.

RIGHTS OF MARRIED WOMEN. Disabilities have been removed, except that she cannot become surety for any body and cannot convey or mortgage her real property without husband joining in conveyance. *Dower* has been abolished, the following statutory provision being substituted therefor: Widow gets one-third in fee of all realty, free from claims of creditors, unless it exceeds $10,000, when she gets one-fourth, and if it exceeds $20,000 she gets one-fifth. If one child only, widow gets one-half realty. *Distributive Share of Husband's Personalty*—If one child, she gets one-half. If more than one child, she gets one-third unless she be his second wife. This right cannot be defeated by husband's will.

CHATTEL MORTGAGES. Invalid as to third parties unless recorded in the office of the recorder of the county where mortgagor resides within 10 days. If nonresident, it must be recorded in county where property is situated.

LAWS OF INDIAN TERRITORY.

STATUTE OF LIMITATIONS. *Accounts*—3 years. *Commercial Paper*—5 years; under seal, 10 years. *Judgments*—10 years.

EXECUTIONS. A stay of execution is granted as follows: 3 months by giving security 10 days after judgment is rendered.

EXEMPTIONS. *Personal Property*—Head of family, $500 and wages; other residents, $200 and wages. *Homestead*—160 acres in country or 1 acre in city, in each case not to exceed $2500 in value. *Wages*—For 60 days not to exceed $500 if added to personalty.

STATUTE OF FRAUDS. Contracts for the sale of goods, wares and merchandise for $30 or over must be in writing. Other essential features have been adopted.

INTEREST. Legal rate by statute, 6 per cent; by contract, 10 per cent. *Usury* works a forfeiture of principal and interest.

NEGOTIABLE INSTRUMENTS LAW. Has not been adopted.

RIGHTS OF MARRIED WOMEN. Same as a femme sole. *Dower*—Has been abolished, the following statutory provision being substituted therefor: Widow gets life interest in one-third; if there be no other heirs, widow gets all the realty absolutely. *Distributive share of Husband's Personalty*—If there be children widow gets one-third absolutely; no children, one-half; no heirs, she gets all.

CHATTEL MORTGAGES. Void as to subsequent parties without notice. Must be recorded or filed for record indorsed "This instrument is to be filed but not recorded" with the recorder and will be good for one year only, unless renewed each year within 30 days of the expiration thereof.

LAWS OF IOWA.

STATUTE OF LIMITATIONS. *Accounts*—5 years. *Commercial Paper*—10 years. *Judgments*—In courts of record, 20 years; in courts not of record, 10 years.

EXECUTION. If judgment be for not more than $100, three months' stay is granted; if for more than $100, six months' stay.

EXEMPTIONS. *Personal Property*—Specified articles. *Homestead*—In city, one-half acre; if in country, 40 acres. *Wages*—Earnings for 90 days next preceding the levy.

STATUTE OF FRAUDS. All contracts for the sale of goods, wares and merchandise must be in writing. Other essential features have been adopted.

INTEREST. Legal rate by statute, 6 per cent; by contract, 8 per cent. *Usury* works a forfeiture of interest and costs of suit.

NEGOTIABLE INSTRUMENTS LAW. Adopted in 1902.

RIGHTS OF MARRIED WOMEN. Same as a femme sole. *Dower Rights*—Life estate in one-third realty. *Distributive Share of Husband's Personalty*—If there be no issue, widow gets one-half; if parents be dead and there be no heirs, widow gets the uninherited portion.

CHATTEL MORTGAGES. Void as to subsequent parties without notice. Must be recorded with the county recorder where the mortgagor resides.

LAWS OF KANSAS.

STATUTE OF LIMITATIONS. *Accounts*—3 years. *Commercial Paper*—5 years. *Judgments*—May be kept alive indefinitely by issuing execution every 5 years.

EXECUTION. In *courts of record*, no stay. In *justice of peace courts*, a stay is granted as follows. If amount be $20 or under, 30 days; over $20 and not over $50, 60 days; over $50 and not over $100, 90 days; over $100, 120 days.

EXEMPTIONS. *Personal Property*—Specified articles. Household furniture and wearing apparel not to exceed $500. *Homestead*—1 acre in city or town; in country, 160 acres farming lands together with all improvements thereon. *Wages*—For 3 months.

STATUTE OF FRAUDS. Not in force when contract is to be performed within a year.

INTEREST. Legal rate by statute, 6 per cent; by contract, 10 per cent. *Usury* works a forfeiture of double amount of excess interest.

NEGOTIABLE INSTRUMENTS LAW. Adopted in 1905.

RIGHTS OF MARRIED WOMEN. Same as a femme sole. *Dower Rights*—Dower has been abolished, but wife is entitled to one-half realty of her husband. *Distributive Share of Husband's Personalty*—Widow is entitled to one-half.

CHATTEL MORTGAGES. Void as to subsequent parties without notice. Must be filed with the register of deeds in county where the property is located.

LAWS OF KENTUCKY.

STATUTE OF LIMITATIONS. *Accounts*—5 years. *Commercial Paper*—15 years. *Judgments*—15 years.

EXECUTION. A stay of 3 months is granted in all courts.

EXEMPTIONS. *Personal Property*—Specified articles. *Homestead*—To the value of $1000. *Wages*—$50.

STATUTE OF FRAUDS. Not in force.

INTEREST. Legal rate by statute, 6 per cent; by contract, 6 per cent. *Usury* works a forfeiture of excess interest.

NEGOTIABLE INSTRUMENTS LAW. Adopted in 1904.

RIGHTS OF MARRIED WOMEN. She has full trading rights, except that she cannot sell or mortgage her real estate unless her husband joins. *Dower Rights*—Life estate in one-third realty. *Distributive Share of Husband's Personalty*—Widow is entitled to one-half.

CHATTEL MORTGAGES. Void as against subsequent parties without notice. Must be recorded with the clerk of the county court, where the property is located.

LAWS OF LOUISIANA.

STATUTE OF LIMITATIONS. *Accounts*—3 years. *Commercial Paper*—5 years. *Judgments*—10 years unless revived before expiration of said period, when they are good for 10 years more. May be revived as often as person wishes.

EXECUTIONS. No provision for stay.

EXEMPTIONS. *Personal Property*—Specified articles. *Homestead*—160 acres, not to exceed $2000 in value. Head of family only. Must be recorded. Written waiver only. *Wages*—All laborers' wages and officers' salaries.

STATUTE OF FRAUDS. Sales of goods, wares and merchandise for more than $500 must be in writing and must be proved by one credible witness and other corroborative circumstances. Other essential features have been adopted, except that a verbal sale of land is good as against vendor as well as against vendee who confesses it when interrogated on oath, provided actual delivery has been made.

INTEREST. Legal rate by statute, 5 per cent; by contract, 8 per cent. *Usury* works a forfeiture of whole interest.

NEGOTIABLE INSTRUMENTS LAW. Adopted in 1904.

RIGHTS OF MARRIED WOMEN. Has the right to become a public merchant and as such has free power to contract in respect to her trade. Cannot convey or incumber her separate property without consent of husband in writing. *Dower*—The following provision regulates her property rights. All property is community property unless otherwise expressly stipulated. Upon husband's death intestate leaving no ascendants or descendants, his share goes to widow for life. If issue, she is entitled to use during widowhood only; if no lawful descendants, nor ascendants, nor collateral relations she is entitled to husband's share to exclusion of any natural child, duly acknowledged.

CHATTEL MORTGAGES. Unknown in this state.

LAWS OF MAINE.

STATUTE OF LIMITATIONS. *Accounts*—6 years. *Commercial Paper*—6 years, unless witnessed, when it is 20 years. *Judgments*—20 years.

EXECUTIONS. No provision for stay of execution unless taken by default against nonresident defendant, in which case a stay for 1 year may be had unless plaintiff gives bond in double amount.

EXEMPTIONS. *Personal Property*—Specified articles. *Homestead*—$50 to any householder if properly recorded. Lasts during life of widow and infancy of children. *Wages*—One month's wages not exceeding $20 except for necessaries.

STATUTE OF FRAUDS. Contracts for the sale of goods, wares and merchandise for $300 or more must be in writing. Other essential features have been adopted.

INTEREST. Legal rate by statute, 6 per cent; by contract, no limit except in certain specified cases. *Usury*—No penalty except in specified case when excess interest is forfeited.

NEGOTIABLE INSTRUMENTS LAW. Has not been adopted.

RIGHTS OF MARRIED WOMEN. Same as a femme sole. *Dower* has been abolished, the following statutory provision being substituted therefor: If there be children widow gets one-third of both real and personal property. If there be no children, widow gets one-half of both real and personal property; if there be no kindred, widow gets all of both real and personal property.

CHATTEL MORTGAGES. Void as to subsequent parties unless recorded. Must be recorded with the town clerk in county where mortgagor resides, unless nonresident when it must be filed and recorded in county where property is situated.

LAWS OF MARYLAND.

STATUTE OF LIMITATIONS. *Accounts*—3 years. *Commercial Paper*—3 years, unless under seal, when it is 12 years. *Judgments*—12 years.

EXECUTIONS. All judgments may be superseded for 6 months by confessing judgment and giving security within 2 months after rendition of judgment.

EXEMPTIONS. *Personal Property*—Residents entitled to $100 and certain specified articles, except on judgments for breach of promise to marry or seduction. *Homestead*—No provision. *Wages*—$100; applies to both resident and nonresidents and attachment only binds wages due when laid.

STATUTE OF FRAUDS. Contracts for the sale of goods, wares and merchandise for $50 or over must be in writing. Other essential features have been adopted.

INTEREST. Legal rate by statute, 6 per cent; by contract, 6 per cent. *Usury* works a forfeiture of excess interest.

NEGOTIABLE INSTRUMENTS LAW. Adopted 1898.

RIGHTS OF MARRIED WOMEN. May contract same as a femme sole. Cannot dispose of property so as to defeat husband's interest without husband joining in deed. Disability of infancy

does not apply to married females over 18 years. *Dower*—Life interest in one-third realty. If no heirs she gets all absolutely. *Distributive Share of Husband's Personalty*—She gets one-third absolutely. If children, she gets an additional allowance of $150. If no children, allowance is $75 only.

CHATTEL MORTGAGES. Invalid if not recorded with clerk of circuit court within 20 days. Priority in order of recording.

LAWS OF MASSACHUSETTS.

STATUTE OF LIMITATIONS. *Accounts*—6 years. *Commercial Paper*—6 years. If attested, action may be brought by original payee or his executor or administrator within 20 years. *Judgments*—20 years.

EXECUTIONS. No provision for stay.

EXEMPTIONS. *Personal Property*—Specified articles. Applies to both married and single persons. *Homestead*—To a householder with family, if used as a residence, to the value of $800. Must be recorded and continues for the benefit of widow and infant children. *Wages*—Of laborers to the extent of $20 unless for necessaries when it is $10.

STATUTE OF FRAUDS. Contracts for the sale of goods, wares and merchandise for $50 or over must be in writing. Other essential features have been adopted.

INTEREST. Legal rate by statute, 6 per cent; by contract, no limit if in writing. *Usury*—No penalty.

NEGOTIABLE INSTRUMENTS LAW. Adopted 1898.

RIGHTS OF MARRIED WOMEN. May engage in any business if she files married woman's certificate with town clerk. Cannot contract with husband. Cannot convey so as to defeat husband's curtesy unless he joins in conveyance. *Dower*—Life interest in one-third realty. If there be no children, $5000 and one-half remaining realty. If no kindred she gets all. *Distributive Share of Husband's Personalty*—If there be issue she gets one-third. If no issue, she gets $5000 and one-half of remaining personalty. If no kindred she gets all. Also certain allowance as necessaries.

CHATTEL MORTGAGES. Void as to subsequent parties without notice. Must be recorded within 15 days with town clerk where mortgagor resides and transacts business. If nonresident, it must be recorded where property is situated. If a record in two different places is required and the mortgage is recorded in one within 15 days, it may be recorded in the other within 10 days after first record.

LAWS OF MICHIGAN.

STATUTE OF LIMITATIONS. *Accounts*—6 years. *Commercial Paper*—6 years; under seal, 10 years. *Judgments*—Courts of record, 10 years; justice of peace, 6 years.

EXECUTIONS. *Courts of record*, no stay is granted; *justice of peace courts*, a stay is granted as follows: If judgment be for $50 and under, 4 months; over $50, 6 months.

EXEMPTIONS. *Personal Property*—$250 in any trade, profession, occupation or business, and certain specified articles. *Homestead*—40 acres in country, or 1 lot in city or town; in each case not to exceed $1500 in value. *Wages*—Householder, 80 per cent of wages, but not exceeding $30 nor less than $8; others, 40 per cent, but not exceeding $15 nor less than $4.

STATUTE OF FRAUDS. Contracts for the sale of goods, wares and merchandise for $50 or over must be in writing. Other essential features have been adopted.

INTEREST. Legal rate by statute, 5 per cent; by contract, 7 per cent. *Usury* works a forfeiture of all interest.

NEGOTIABLE INSTRUMENTS LAW. Adopted in 1905.

RIGHTS OF MARRIED WOMEN. Same as a femme sole, except that she cannot become surety for her husband or enter into partnership with him. *Dower*—Life estate in one-third realty. She may avail herself of the following statutory provision in lieu of dower: If no descendants, she gets one-half absolutely. If no descendants, father, mother, brother or sister or children of brother or sister, she gets all. *Distributive Share of Husband's Personalty*—Certain allowance and one-third of surplus if children; if only one child, one half; if no child and value of personalty does not exceed $3000 she gets all; if it exceeds $3000 she gets one-half of surplus. If no children, father, mother, brother or sister or issue of brother or sister, she gets all.

CHATTEL MORTGAGES. Void unless filed with city or township clerk where mortgagor resides. If nonresident must be filed where property is located

LAWS OF MINNESOTA.

STATUTE OF LIMITATIONS. *Accounts*—6 years. *Commercial Paper*—6 years. *Judgments*—10 years.

EXECUTIONS. *Courts of record*, 6 months' stay is granted. *Justice of peace courts*—If judgment be for $10, 1 month; $10 to $25, 2 months; $25 to $50, 3 months; over $50, 6 months. In each of the courts security must be given within 10 days after rendering judgment.

EXEMPTIONS. *Personal Property*—Specified articles. Also printing presses together with stock in trade not exceeding $2400. Also life insurance to wife or child not exceeding $10,000. *Homestead*—80 acres in country, one-half acre in town or one-fourth acre in city. *Wages*—For 30 days not exceeding $25.

STATUTE OF FRAUDS. Contracts for the sale of goods, wares and merchandise for $50 or over must be in writing. Other essential features have been adopted.

INTEREST. Legal rate by statute, 6 per cent; by contract, 10 per cent. *Usury* works a forfeiture of principal and interest.

NEGOTIABLE INSTRUMENTS LAW. Has not been adopted.

RIGHTS OF MARRIED WOMEN. Can engage in business same as a femme sole. Apparently she cannot convey realty without husband joins in deed. Cannot convey to husband. Cannot mortgage or convey her homestead without husband joining. She is jointly liable for necessaries. *Dower*—If there be children, she gets one-third absolutely; if no children, she gets all. *Distributive Share of Husband's Personalty*—Allowance not exceeding $500 and additional allowance for maintenance during settlement of estate. If there be children, she gets one-third of the residue; if no children she gets all.

CHATTEL MORTGAGES. Void as to subsequent parties without notice. Must be filed with town clerk where mortgagor resides. If nonresident, where property is situated. Must be two attesting witnesses. Good for 6 years.

LAWS OF MISSISSIPPI.

STATUTE OF LIMITATIONS. *Accounts*—3 years. *Commercial Paper*—6 years. *Judgments*—7 years.

EXECUTIONS. *Courts of record*, no stay is granted; *justice of peace*, a stay is granted as follows: $50 and under, 30 days; over $50, 60 days, by giving bond within 5 days after judgment.

EXEMPTIONS. *Personal Property*—Specified articles. *Homestead*—$3000, in no case exceeding 160 acres in the country. *Wages*—$50 to head of family.

STATUTE OF FRAUDS. Contracts for the sale of goods, wares and merchandise for $50 or over must be in writing. Other essential features have been adopted.

INTEREST. Legal rate by statute, 6 per cent; by contract, 10 per cent. *Usury* works a forfeiture of interest.

NEGOTIABLE INSTRUMENTS LAW. Has not been adopted.

RIGHTS OF MARRIED WOMEN. Same as a femme sole. *Dower*—Has been abolished, the following statutory provision being substituted therefor: If there be descendants, widow gets a child's share of realty and personalty absolutely. If no descendants, she gets all the realty and personalty absolutely.

CHATTEL MORTGAGES. Void unless recorded with the chancery clerk in county where property is located. If removed to another county with consent of mortgagee he must record mortgage in that county within 12 months.

LAWS OF MISSOURI.

STATUTE OF LIMITATIONS. *Accounts*—5 years. *Commercial Paper*—10 years. *Judgments*—10 years.

EXECUTIONS. No provision for stay.

EXEMPTIONS. *Personal Property*—Specified articles. *Homestead*—In country, 160 acres not exceeding in value the sum of $1500. In towns of less than 10,000, 5 acres, not exceeding $1500 in value. In cities of 10,000 to 40,000, 30 square rods, not exceeding 1 per cent in value. In cities of 40,000 and upwards, 18 square rods, not exceeding $3000 in value. *Wages*—90 per cent, not exceeding together with other personal property $300.

STATUTE OF FRAUDS. Contracts for the sale of goods, wares and merchandise for $30 or over must be in writing. Other essential features have been adopted.

INTEREST. Legal rate by statute, 6 per cent; by contract, 8 per cent. *Usury* works a forfeiture of excess above 6 per cent.

NEGOTIABLE INSTRUMENTS LAW. Adopted in 1905.

RIGHTS OF MARRIED WOMEN. Same as a femme sole. *Dower*—Life interest in one-third realty. If no descendants she gets absolutely all realty which came to the husband in right of the marriage, not subject to the husband's debts; one-half absolutely of all realty belonging to hus-

band at time of his death, subject to payment of his debts. She may elect to take either her dower or the statutory provision when no descendants. *Distributive Share of Husband's Personalty*—If descendants, she gets a child's share absolutely. If no descendants, she shares as in realty. (See above, under *Dower*.)

CHATTEL MORTGAGES. Invalid unless filed or recorded with the recorder in county where mortgagor lives. If nonresident in county where property is located.

LAWS OF MONTANA.

STATUTE OF LIMITATIONS. *Accounts*—5 years. *Commercial Paper*—8 years. *Judgments*—Courts of record, 10 years; justice of peace, 5 years.

EXECUTIONS. No provision for stay of execution.

EXEMPTIONS. *Personal Property*—Specified articles. *Homestead*—160 acres in country, or one-fourth acre in town; in each case not to exceed $2500 in value. *Wages*—For 30 days to head of family unless for necessaries when only one-half is exempt.

STATUTE OF FRAUDS. Contracts for the sale of goods, wares and merchandise for $200 or over must be in writing. Other essential features have been adopted.

INTEREST. Legal rate by statute, 8 per cent; by contract, no limit.

NEGOTIABLE INSTRUMENTS LAW. Adopted in 1903.

RIGHTS OF MARRIED WOMEN. May become a sole trader by judgment of the district court of the county in which she has resided for 6 months. *Dower*—Life estate in one-third realty. If no descendants she may elect to take either dower or the following statutory provision, one-half absolutely after payment of husband's debts. *Distributive Share of Husband's Personalty*—If one child or issue of such, she gets equal share. If more than one child, she gets one-third. If no descendants, one-half. If no descendants, father, mother, brother or sister, she gets all.

CHATTEL MORTGAGES. Void unless recorded with county clerk where mortgagor resides. If nonresident it must be recorded where property is located. Is good until maturity of debt and 60 days thereafter with provision for renewal.

LAWS OF NEBRASKA.

STATUTE OF LIMITATIONS. *Accounts*—4 years. *Commercial Paper*—5 years. *Judgments*—May be kept alive indefinitely by issuing execution every 5 years.

EXECUTION. In *courts of record* a stay of execution is granted as follows: If amount be $50 or less, 3 months; $50 to $100, 6 months; in all other cases, 9 months. In *justice of peace courts*, if amount be $10 or under, 60 days; over $10 to $50, 90 days; $50 to $100, 6 months; $100 to $200, 9 months.

EXEMPTIONS. *Personal Property*—Specified articles. *Homestead*—House and 160 acres in the country, or house and 2 lots in the city; in each case value must not exceed $2000.

STATUTE OF FRAUDS. Contract for the sale of goods, wares and merchandise for $50 or over must be in writing. Other essential features have been adopted.

INTEREST. Legal rate by statute, 7 per cent; by contract, 10 per cent. *Usury* works forfeiture of all interest.

NEGOTIABLE INSTRUMENTS LAW. Has not been adopted.

RIGHTS OF MARRIED WOMEN. Same as a femme sole. *Dower Rights*—Life estate in one-third realty. *Distributive Share of Husband's Personalty*—All articles of household furniture, ornaments and wearing apparel of the deceased, and all property and articles that were exempt at the time of his death and other personal property to be selected by her not to exceed $200. She then takes a child's share of the remainder. If there be no issue or kindred, widow takes all.

CHATTEL MORTGAGES. Void as to subsequent parties without notice. Must be filed with county clerk where mortgagor resides, unless he resides out of the state, in which case it must be filed where property is located.

LAWS OF NEVADA.

STATUTE OF LIMITATIONS. *Accounts*—4 years. *Commercial Paper*—6 years. *Judgments*—6 years.

EXECUTION. No stay.

EXEMPTIONS. *Personal Property*—Specified articles. *Homestead*—Land and improvements not exceeding $5000 in value. *Wages*—$50 earned during 30 days next preceding issue of process.

STATUTE OF FRAUDS. Contracts for the sale of goods, wares and merchandise for $50 or under must be in writing. Other essential features have been adopted.

INTEREST. Legal rate by statute, 7 per cent; by contract, no limit.

NEGOTIABLE INSTRUMENTS LAW. Has not been adopted.

RIGHTS OF MARRIED WOMEN. She may become a sole trader, provided she gets an order of the court and records the same. *Dower Rights*—Dower has been abolished, the following statutory provision being substituted therefor: The widow is entitled to one-half of the community property (that is, property acquired by the spouses during marriage), she then shares of the real and personal property as follows: If there be one child or issue of one child, one-half; if more than one child or the issue of one or more children, one-third; if no child or issue of children, one-half.

CHATTEL MORTGAGES. Void against creditors and purchasers without notice. Must be recorded with recorder where property is located and where mortgagor resides.

LAWS OF NEW HAMPSHIRE.

STATUTE OF LIMITATIONS. *Accounts*—6 years. *Commercial Paper*—6 years. *Judgments*—20 years.

EXECUTION. The granting of a stay of execution is in the discretion of the court.

EXEMPTIONS. *Personal Property*—Specified articles. *Homestead*—Land to the value of $500. *Wages*—$20.

STATUTE OF FRAUDS. Contract for the sale of goods, wares and merchandise for $33 or under must be in writing. Other essential features have been adopted.

INTEREST. Legal rate by statute, 6 per cent; by contract, 6 per cent. *Usury* works a forfeiture of three times the excess of legal interest.

NEGOTIABLE INSTRUMENTS LAW. Has not been adopted.

RIGHTS OF MARRIED WOMEN. Same as a femme sole, except that she cannot become surety for her husband. *Dower Rights*—She is entitled to so much of any real estate as will produce a yearly income equal to one-third of the yearly income thereof at the death of her husband. *Distributive Share of Husband's Personalty*—If issue survives, widow gets one-third; if no issue survives, she gets one-half.

CHATTEL MORTGAGES. Void as to subsequent parties without notice. Must be recorded with town clerk where mortgagor resides.

LAWS OF NEW JERSEY.

STATUTE OF LIMITATIONS. *Accounts*—6 years. *Commercial Paper*—6 years. *Judgments*—20 years.

EXECUTION. In *circuit or supreme court*, no stay; in *district and justice of peace courts*, a stay of execution is granted as follows: If amount is from $5 to $15, 1 month; $15 to $60, 3 months; more than $60, 6 months.

EXEMPTIONS. *Personal Property*—$200 and wearing apparel. *Homestead*—To the value of $1000; must be advertised and recorded. *Wages*—All.

STATUTE OF FRAUDS. Legal rate by statute, 6 per cent; by contract, 6 per cent. *Usury* works a forfeiture of all interest and costs.

NEGOTIABLE INSTRUMENTS LAW. Adopted in 1902.

RIGHTS OF MARRIED WOMEN. She may become a sole trader, but cannot become an accommodation indorser, guarantor or surety. *Dower Rights*—Life estate in one-third realty. *Distributive Share of Husband's Personalty*—If there be children, widow gets one-third; if no children, one-half.

CHATTEL MORTGAGES. Void as to creditors, purchasers and mortgagees without notice. Must be recorded with the county clerk, where mortgagor resides; if he resides out of the state, the recording must be where the property is located.

LAWS OF NEW MEXICO.

STATUTE OF LIMITATIONS. *Accounts*—4 years. *Commercial Paper*—6 years. *Judgments*—7 years.

EXECUTION. No stay.

EXEMPTIONS. *Personal Property*—Specified articles, and if not owner of homestead, $500 additional. *Homestead*—To the value of $1000. *Wages*—3 months.

STATUTE OF FRAUDS. All contracts for the sale of goods, wares and merchandise must be in writing. Other essential features have been adopted.

INTEREST. Legal rate by statute, 6 per cent; by contract, 12 per cent. *Usury* works a forfeiture of double the amount of excess interest. A fine is also imposed.

NEGOTIABLE INSTRUMENTS LAW. Has not been adopted.

RIGHTS OF MARRIED WOMEN. She has full trading rights, except when dealing with real estate; then her husband must join in the transaction. *Dower Rights*—By statute the widow gets

one-half of community property. She gets one-fourth of the remainder of the community property and husband's separate estate. If no issue she gets all.

CHATTEL MORTGAGES. Void unless filed and recorded with the recorder where property is located.

LAWS OF NEW YORK.

STATUTE OF LIMITATIONS. *Accounts*—6 years. *Commercial Paper*—6 years; if under seal, 20 years. *Judgments*—Courts of record, 20 years; inferior courts, 6 years, but if transcripted, 20 years.

EXECUTIONS. No provision for stay of execution.

EXEMPTIONS. *Personal Property*—Specified articles, and $250 additional to head of family. No exemption for purchase price. *Homestead*—$1000 provided that the deed or notice is properly recorded. *Wages*—For 60 days, provided they are necessary for support of family. $12 per week only exempt where judgment is for necessaries or domestic's wages or employee's salary.

STATUTE OF FRAUDS. Contracts for the sale of goods, wares and merchandise for $50 or over must be in writing. Other essential features adopted.

INTEREST. Legal rate by statute, 6 per cent; by contract, 6 per cent. *Usury* works a forfeiture of both debt and interest. In case of banks, loss of interest only, unless already paid, when twice the amount of interest is forfeited. Also misdemeanor.

NEGOTIABLE INSTRUMENTS LAW. Adopted in 1897 and 1898.

RIGHTS OF MARRIED WOMEN. Same as a femme sole. *Dower*—Life interest in one-third realty. *Distributive Share of Husband's Personalty*—If issue, one-third absolutely. If no issue and no parent, but brother or sister, nephew or niece, she gets all if it does not exceed $2000. If it exceeds $2000, she gets one-half and $2000 additional. If no issue but a parent she gets one-half. If no issue, parent, brother or sister, nephew or niece, she gets all.

CHATTEL MORTGAGES. Void unless the mortgage or a true copy thereof is filed with the register of the counties of Kings and New York, or with the county clerk or town clerk in other counties. If the mortgagor is a resident, must be filed in the town or city where he resides. If not a resident, in the town or city where the property is at the time of the mortgage.

LAWS OF NORTH CAROLINA.

STATUTE OF LIMITATIONS. *Accounts*—3 years. *Commercial Paper*—If under seal, 10 years, otherwise 3 years. *Judgments*—Court of record, 10 years; justice of peace, 7 years.

EXECUTION. *Court of record*, no stay; *justice of peace*, a stay is granted as follows: If amount be $25 or under, 1 month; $25 to $50, 3 months; $50 to $100, 4 months; over $100, 6 months.

EXEMPTIONS. *Personal Property*—Specified articles not to exceed in value $500. *Homestead*—To the value of $1000. *Wages*—60 days if necessary for support of family.

STATUTE OF FRAUDS. Not in force except as to the sale of liquor to the amount of $10.

INTEREST. Legal rate by statute, 6 per cent; by contract, 6 per cent. *Usury* works a forfeiture of interest. If interest has been paid double amount paid may be recovered.

NEGOTIABLE INSTRUMENTS LAW. Adopted in 1899.

RIGHTS OF MARRIED WOMEN. She has full trading rights, if she registers as a "free trader" in the office of registrar of deeds. *Dower Rights*—Life estate in one-third of the realty. *Distributive Share of Husband's Personalty*—If not more than two children, one-third goes to widow. If more than two children widow gets a child's share. If no child or legal representative, widow gets one-half.

CHATTEL MORTGAGES. Void as to subsequent parties without notice. Must be recorded with the register of deeds where the mortgagor resides; if he resides out of the state, recording must be where property is located.

LAWS OF NORTH DAKOTA.

STATUTE OF LIMITATION. *Accounts*—6 years. *Commercial Paper*—6 years. *Judgments*—Are liens for 10 years, and may be revived.

EXECUTION. No stay.

EXEMPTIONS. *Personal Property*—$1000 if head of family resides within the state. *Homestead*—In city or town, 2 acres; in country, 160 acres; in each case value must not exceed $5000. *Wages*—No provision.

STATUTE OF FRAUDS. Contract for the sale of goods, wares and merchandise for $50 or over must be in writing. Other essential provisions have not been adopted.

INTEREST. Legal rate by statute, 7 per cent; by contract, 12 per cent. *Usury* works a forfeiture of interest. If interest has been paid double amount paid may be recovered.

NEGOTIABLE INSTRUMENTS LAW. Adopted in 1899.

RIGHTS OF MARRIED WOMEN. Same as a femme sole. *Dower Rights*—Dower has been abolished, the following statutory provision being substituted therefor: If but one child or issue of that child, widow gets one-half real and personal property; if more than one child, one-third; if no issue and estate does not exceed $5000 in value all the estate goes to the wife; if it exceed $5000, widow gets that sum and one-half of the excess. If there be no issue, father, mother, brother or sister, widow gets all.

CHATTEL MORTGAGES. Void as to subsequent parties without notice. Must be filed with register of deeds where property is located.

LAWS OF OHIO.

STATUTE OF LIMITATION. *Accounts*—6 years from date of each item. *Commercial Paper*—15 years. *Judgments*—May be kept alive indefinitely by issuing execution every 5 years.

EXECUTION. In *courts of record*, no stay; in *justice of peace courts* a stay is granted as follows: If amount be $5, 60 days; over $5 and under $20, 90 days; over $20 and under $50, 150 days; over $50, 240 days.

EXEMPTIONS. *Personal property*—Specified articles. *Homestead*—To the value of $1000. *Wages*—Earnings of self or minor children for three months, if necessary for support of family.

STATUTE OF FRAUDS. Not in force as to goods, wares and merchandise. Other essential features have been adopted.

INTEREST. Legal rate by statute, 6 per cent; by contract, 8 per cent. *Usury* works a forfeiture of excess over 6 per cent.

NEGOTIABLE INSTRUMENTS LAW. Adopted in 1902.

RIGHTS OF MARRIED WOMEN. Same as a femme sole. *Dower Rights*—Life estate in one-third realty. *Distributive Share of Husband's Personalty*—If no children or their legal representatives, wife gets all; if children or their legal representatives, widow takes one-half of the first $400, and one-third of the remainder.

CHATTEL MORTGAGES. Void as to subsequent parties without notice. Must be filed with township recorder, where mortgagor resides; if he resides out of the state, recording must be where property is located.

LAWS OF OKLAHOMA.

STATUTE OF LIMITATIONS. *Accounts*—3 years. *Commercial Paper*—5 years. *Judgments*—May be kept alive indefinitely by issuing execution every 5 years.

EXECUTION, In *courts of record*, no stay; in *justice of peace court*, a stay is granted as follows: If amount be $20, 30 days; between $20 and $50, 60 days, between $50 and $100, 90 days; more than $100, 120 days.

EXEMPTIONS. *Personal Property*—Specified articles. *Homestead*—160 acres in the country or 1 acre in the city. *Wages*—"Current wages for 90 days" to head of family; to others, "current wages."

STATUTE OF FRAUDS. Contract for the sale of goods, wares and merchandise for over $50 must be in writing. Other essential features have been adopted.

INTEREST. Legal rate by statute, 7 per cent; by contract, 12 per cent. *Usury* works a forfeiture of all interest.

NEGOTIABLE INSTRUMENTS LAW. Has not been adopted.

RIGHTS OF MARRIED WOMEN. Same as a femme sole. *Dower Rights*—Dower has been abolished, the following statutory provision being substituted therefor: If there be one child or lawful issue of one child, widow takes one-half of real and personal property; if more than one child or lawful issue of one or more children, widow gets one-third of real and personal property; if there be no issue, father, mother, brother or sister, widow takes all real and personal property.

CHATTEL MORTGAGES. Void as to subsequent parties without notice. Must be filed with register of deeds, where property is located.

LAWS OF OREGON.

STATUTE OF LIMITATIONS. *Accounts*—6 years. *Commercial Paper*—6 years. *Judgments*—10 years.

EXECUTION. No stay.

EXEMPTIONS. *Personal Property*—Specified articles. *Homestead*—In country not more than 160 acres nor less than 20 acres; or in city not more than 1 block nor less than 1 lot; value in either case not to exceed $1500. *Wages*—If necessary to the support of family 30 days, not to exceed $75.

STATUTE OF FRAUDS. All contracts for the sale of goods, wares and merchandise for $50 or over must be in writing.

INTEREST. Legal rate by statute, 6 per cent; by contract, 10 per cent. *Usury* works a forfeiture of principal and interest to be paid into the school fund.

NEGOTIABLE INSTRUMENTS LAW. Adopted in 1899.

RIGHTS OF MARRIED WOMEN. Same as a femme sole. *Dower Rights*—Life estate in one-half realty. *Distributive Share of Husband's Personalty*—If there be issue, one-half; if no issue, widow takes all.

CHATTEL MORTGAGES. Void as against subsequent parties without notice. Must be filed and recorded in office of county clerk where mortgagor resides.

LAWS OF PENNSYLVANIA.

STATUTE OF LIMITATIONS. *Accounts*—6 years. *Commercial Paper*—6 years. *Judgments*—20 years; must be revived every 5 years, otherwise lien on realty expires.

EXECUTIONS. A stay of execution is granted as follows: *Courts of record*, not over $200, 6 months; over $200 and less than $500, 9 months; over $500, 12 months. *Justice of peace courts*, over $5.33 and not exceeding $20, 3 months; over $20 and not exceeding $60, 6 months; over $60 and not exceeding $300, 9 months. Judgments obtained for manual labor excepted.

EXEMPTIONS. *Personal Property*—$300, exclusive of all wearing apparel and may include realty. *Homestead*—No provision. *Wages*—All.

STATUTE OF FRAUDS. Not in force as to goods, wares and merchandise. Other essential features have been adopted.

INTEREST. Legal rate by statute, 6 per cent; by contract, 6 per cent. *Usury* works a forfeiture of excess interest.

NEGOTIABLE INSTRUMENTS LAW. Adopted in 1901.

RIGHTS OF MARRIED WOMEN. Same as a femme sole, except that she cannot become an accommodation indorser, maker, guarantor, or surety for another or convey or mortgage her realty unless her husband joins in the instrument. *Dower*—Regulated by the following statute: If there be issue she gets one-third for life. If no issue, but collateral heirs, she gets one-half for life. If no heirs, she gets all. *Distributive Share of Husband's Personalty*—If issue, she gets one-third absolutely. If no issue, but collateral kindred, one-half absolutely. If no kindred, she gets all.

CHATTEL MORTGAGES. Void unless recorded with the public recorder or register in the county where the chattels actually are at the time of the execution of the mortgage.

LAWS OF RHODE ISLAND.

STATUTE OF LIMITATIONS. *Accounts*—6 years. *Commercial Paper*—6 years. *Judgments*—20 years.

EXECUTION. A stay will be granted for a reasonable time if good cause be shown.

EXEMPTIONS. *Personal Property*—Specified articles. *Homestead*—None. *Wages*—$10; also salary of wife and minor children.

STATUTE OF FRAUDS. Not in force as to goods, wares and merchandise. Other essential provisions adopted.

INTEREST. Legal rate by statute, 6 per cent; by contract, no limit.

NEGOTIABLE INSTRUMENTS LAW. Adopted in 1899.

RIGHTS OF MARRIED WOMEN. Same as a femme sole. *Dower Rights*—Life estate in one-third realty. *Distributive Share of Husband's Personalty*—If without issue, widow gets one-half; if with issue, one-third.

CHATTEL MORTGAGES. Void as to subsequent parties without notice. Must be recorded with the town clerk where mortgagor resides.

LAWS OF SOUTH CAROLINA.

STATUTE OF LIMITATIONS. *Accounts*—6 years. *Commercial Paper*—6 years. *Judgments*—20 years.

EXECUTION. No stay.

EXEMPTIONS. *Personal Property*—$500. *Homestead*—To the value of $1000. *Wages*—60 days if necessary to support family.

STATUTE OF FRAUDS. Contracts for the sale of goods, wares and merchandise for $50 or over must be in writing.

INTEREST. Legal rate by statute, 7 per cent; by contract, 8 per cent. *Usury* works a for-

feiture of interest; if paid, double amount paid as interest may be recovered by separate action or by way of counterclaim.

NEGOTIABLE INSTRUMENTS LAW. Has not been adopted.

RIGHTS OF MARRIED WOMEN. Same as a femme sole. *Dower Rights*—Life estate in one-third realty. *Distributive Share of Husband's Personalty*—If there be one or more children, widow gets one-third; if no issue, widow gets one-half. If no issue, father, mother, brother or sister, widow takes all.

CHATTEL MORTGAGES. Void as to subsequent parties without notice. Must be recorded with the register of mesne conveyances where mortgagor resides; if he resides out of the state the recording must be where the property is located. .

LAWS OF SOUTH DAKOTA.

STATUTE OF LIMITATIONS. *Accounts*—6 years. *Commercial Paper*—6 years. *Judgments*—20 years.

EXECUTION. *Courts of record*, discretion of judge; *justice of peace courts*, no stay.

EXEMPTIONS. *Personal Property*—Specified articles. *Homestead*—In country, 160 acres or in city 1 acre; in either case value not to exceed $5000. *Wages*—60 days if necessary for the support of family.

STATUTE OF FRAUDS. Contract for the sale of goods, wares and merchandise for $50 or over must be in writing. Other essential features have been adopted.

INTEREST. Legal rate by statute, 7 per cent; by contract, 12 per cent. *Usury* works a forfeiture of interest. It is also a misdemeanor.

NEGOTIABLE INSTRUMENTS LAW. Has not been adopted.

RIGHTS OF MARRIED WOMEN. Same as a femme sole. *Dower Rights*—Dower has been abolished, the following statutory provision being substituted therefor: If there be one child or issue of one child, widow gets one-half of both realty and personalty. If more than one child, or issue of one or more, widow gets one-third. If no issue, one-half to widow. If no issue, father, mother, brother or sister, widow gets all.

CHATTEL MORTGAGES. Void as to subsequent parties without notice. Must be filed with the register of deeds where property is located.

LAWS OF TENNESSEE.

STATUTE OF LIMITATIONS. *Accounts*—6 years. *Commercial Paper*—6 years. *Judgments*—10 years.

EXECUTION. In *courts of record*, a stay may be granted in the discretion of the court; in *justice of the peace courts*, a stay of 8 months is allowed.

EXEMPTIONS. *Personal Property*—Specified articles. *Homestead*—To the value of $1000. *Wages*—$30 for all except nonresidents.

STATUTE OF FRAUDS. Not in force.

INTEREST. Legal rate by statute, 6 per cent; by contract, 6 per cent. *Usury* works a forfeiture of excess interest.

NEGOTIABLE INSTRUMENTS LAW. Adopted in 1899.

RIGHTS OF MARRIED WOMEN. Same as a femme sole. *Dower Right*—Life estate in one-third realty. *Distributive Share of Husband's Personalty*—If there be children or the descendants of children the widow takes a child's share. If there are no children nor the descendants of children, the widow takes all.

CHATTEL MORTGAGES. Void as against subsequent parties without notice. Must be registered with register of deeds.

LAWS OF TEXAS.

STATUTE OF LIMITATIONS. *Accounts*—2 years from the date of each item. *Commercial Paper*—4 years. *Judgments*—10 years.

EXECUTION. *Courts of record*, no stay; *justice of peace courts*, 3 months.

EXEMPTIONS. *Personal Property*—Specified articles. *Homestead*—In country, 200 acres and improvements; in city, $5000 lot regardless of value of improvements. *Wages*—All current wages for personal services.

STATUTE OF FRAUDS. No provision as to contracts for the sale of goods, wares and merchandise. Other essential features have been adopted.

INTEREST. Legal rate, by statute, 6 per cent; by contract, 10 per cent. *Usury* works a forfeiture of all interest.

NEGOTIABLE INSTRUMENTS LAW. Has not been adopted.

RIGHTS OF MARRIED WOMEN. She may be a merchant, but must use her separate property. She cannot carry on a partnership and cannot buy on credit. Her profits become liable for her husband's debts. *Dower*—Dower has been abolished, the following statutory provision being substituted therefor: If there be descendants, she gets life estate in one-third. If no descendants, she gets one-half absolutely. If no descendants, or parents or brother or sister, she gets all. Of community property she gets one-half absolutely, if there be descendants; if no descendants, she gets all. *Distributive Share of Husband's Personalty*—If there be descendants she gets one-third absolutely. If no descendants, she gets all.

CHATTEL MORTGAGES. Void as to third parties unless filed with the recorder where the mortgagor resides. If nonresident, where the property is located.

LAWS OF UTAH.

STATUTE OF LIMITATIONS. *Accounts*—4 years. *Commercial Paper*—6 years. *Judgments*—8 years.

EXECUTION. No stay.

EXEMPTIONS. *Personal Property*—Specified articles. *Homestead*—To the value of $1500, also $500 for wife and $250 for each member of the family. *Wages*—One-half wages for 30 days, said sum not to be less than $30.

STATUTE OF FRAUDS. Contracts for the sale of goods, wares and merchandise for $200 or over must be in writing. Other essential features have been adopted.

INTEREST. Legal rate by statute, 8 per cent; by contract, no limit.

NEGOTIABLE INSTRUMENTS LAW. Adopted 1899.

RIGHTS OF MARRIED WOMEN. Same as a femme sole. *Dower Rights*—Dower has been abolished, the following statutory provision being substituted therefor: Widow entitled to one-third in value of all the legal and equitable estates in real property. The value of such part of the homestead as may be set aside to the widow shall be deducted from her distributive share. *Distributive Share of Husband's Personalty*—If one child or the issue of one child, widow gets one-half; if more than one child, or the issue of such, widow gets one-third.

CHATTEL MORTGAGES. Void as to subsequent parties without notice. Must be filed with recorder where property is situated if mortgagor resides out of state; if mortgagor resides in the state, must be recorded at the place of his residence.

LAWS OF VERMONT.

STATUTE OF LIMITATIONS. *Accounts*—6 years. *Commercial Paper*—6 years. *Judgments*—8 years.

EXECUTION. No stay.

EXEMPTIONS. *Personal Property*—Specified articles. *Homestead*—To value of $500 with rents, issue and products thereof. *Wages*—$10.

STATUTE OF FRAUDS. Contracts for the sale of goods, wares and merchandise for $40 or over must be in writing. Other essential features have been adopted.

INTEREST. Legal rate by statute, 6 per cent; by contract, 6 per cent. *Usury* works forfeiture of excess interest.

NEGOTIABLE INSTRUMENTS LAW. Has not been adopted.

RIGHTS OF MARRIED WOMEN. She may become a sole trader, except that she cannot contract with her husband. *Dower Rights*—Life estate in one-third realty. *Distributive Share of Husband's Personalty*—If no issue and personal estate does not exceed $2000, wife takes all. If it exceeds $2000, widow takes $2000 and one-half the remainder. If the deceased has no kindred who by law may inherit the estate, the surviving wife shall be entitled to the whole estate.

CHATTEL MORTGAGES. Void as to subsequent parties without notice. Must be recorded with town or city clerk, where mortgagor resides; but if he resides out of the state, where property is located.

LAWS OF VIRGINIA.

STATUTE OF LIMITATIONS. *Accounts*—3 years; *retail store accounts*, 2 years. *Commercial Paper*—5 years; under seal, 10 years. *Judgments*—20 years.

EXECUTION. In *courts of record*, no stay; in *justice of the peace courts*, 30, 60 and 90 days.

EXEMPTIONS. *Personal Property*—Specified articles. *Homestead*—To the value of $2000. *Wages*—Not exceeding $50 per month.

STATUTE OF FRAUDS. Not in force.

INTEREST. Legal rate by statute, 6 per cent; by contract, 6 per cent. *Usury* works a forfeiture of all interest.

NEGOTIABLE INSTRUMENTS LAW. Adopted in 1898.

RIGHTS OF MARRIED WOMEN. Same as a femme sole. *Dower Rights*—Life estate in one-third realty. *Distributive Share of Husband's Personalty*—If there be issue, widow gets one-third; if no issue, widow gets all.

CHATTEL MORTGAGES. Void as to subsequent parties without notice. Must be recorded in the office of the county or city clerk, where mortgagor resides and where property is located.

LAWS OF WASHINGTON.

STATUTE OF LIMITATIONS. *Accounts*—3 years. *Commercial Paper*—6 years. *Judgments*—6 years.

EXECUTION. In *justice of the peace courts*, if judgment be for $25 or less a stay of 1 month is granted; over $25, 2 months; in *supreme court*, if under $500, 30 days; $500 to $1500, 60 days; over $1500, 90 days; in other *courts of record*, if under $300, 2 months; $300 to $1000, 5 months; over $1000, 4 months.

EXEMPTIONS. *Personal Property*—Specified articles. *Homestead*—To the value of $2000. *Wages*—$100, if necessary for the support of family.

STATUTE OF FRAUDS. Contracts for the sale of goods, wares and merchandise for $50 or over must be in writing. Other essential features have been adopted.

INTEREST. Legal rate by statute, 6 per cent; by contract, 12 per cent. *Usury* works a forfeiture of excess interest; also forfeiture of twice the amount of interest paid.

NEGOTIABLE INSTRUMENTS LAW. Adopted in 1899.

RIGHTS OF MARRIED WOMEN. Same as a femme sole; but she cannot become a partner of her husband. *Dower Rights*—Dower has been abolished, the following statutory provision being substituted therefor: Wife takes her share of community property, and if there be no testamentary disposition of same and no legitimate issue of his, her or their bodies, she takes all the community property. If there be one child or lawful issue of one child, widow takes one-half of all other realty. If more than one child or issue of same, one-third. If no issue at all, one-half. If no issue, father, mother, brother or sister, widow gets all. *Distributive Share of Husband's Personalty*—If issue, one-half. If no issue, all.

CHATTEL MORTGAGES. Void as to subsequent parties without notice. Must be recorded and filed with the county auditor where the property is located.

LAWS OF WEST VIRGINIA.

STATUTE OF LIMITATIONS. *Accounts*—5 years. *Commercial Paper*—10 years. *Judgments*—May be kept alive indefinitely by issuing execution.

EXECUTION. No stay in *courts of record*; in *justice of peace*, a stay is granted as follows: If amount be $50, 2 months; $50 to $100, 4 months; over $100, 6 months.

EXEMPTIONS. *Personal Property*—$200 including wages. *Homestead*—To the value of $1000.

STATUTE OF FRAUDS. Not in force.

INTEREST. Legal rate by statute, 6 per cent; by contract, 6 per cent. *Usury* works a forfeiture of excess interest.

NEGOTIABLE INSTRUMENTS LAW. Has not been adopted.

RIGHTS OF MARRIED WOMEN. Same as a femme sole. *Dower*—Life interest in one-third realty. If there be no heirs, widow gets all the realty. *Distributive Share of Husband's Personalty*—If there be children, she gets one-third; if no children, she gets all.

CHATTEL MORTGAGES. Void as to third parties unless recorded with the county clerk where the property is located.

LAWS OF WISCONSIN.

STATUTE OF LIMITATIONS. *Accounts*—6 years. *Commercial Paper*—10 years. *Judgments*—Courts of record, 20 years; courts not of record, 6 years.

EXECUTION. *Courts of record*, 20 days; in *justice of the peace courts*, a stay is granted as follows: If amount be $10, 1 month; if above $10 and not exceeding $30, 2 months; above $30 and not exceeding $50, 3 months; above $50, 4 months.

EXEMPTIONS. *Personal Property*—Specified articles. *Homestead*—In city or village, one-fourth acre and dwelling house thereon and its appurtenances; in country, 40 acres used for agricultural purposes. *Wages*—For 3 months prior to execution, not to exceed average of $60 per month.

STATUTE OF FRAUDS. Contracts for the sale of goods, wares and merchandise for $50 or over must be in writing. Other essential features have been adopted.

INTEREST. Legal rate by statute, 6 per cent; by contract, 10 per cent. *Usury* works a forfeiture of all interest; treble amount of interest paid may be recovered.

NEGOTIABLE INSTRUMENTS LAW. Adopted in 1899.

RIGHTS OF MARRIED WOMEN. Same as a femme sole. *Dower*—Life interest in one-third realty. If no lawful issue she gets all absolutely. *Distributive Share of Husband's Personalty*—If issue, she gets a child's share. If no issue, she gets all.

CHATTEL MORTGAGES. Void as to third parties unless filed with the town clerk where mortgagor resides; if nonresident, where property is located.

LAWS OF WYOMING.

STATUTE OF LIMITATIONS. *Accounts*—8 years. *Commercial Paper*—5 years. *Judgments*—5 years.

EXECUTION. In *court of record*, 6 months stay is granted; in *justice of peace*, as follows: If amount be $50, 30 days; $50 to $100, 4 months; over $100, 6 months.

EXEMPTIONS. *Personal Property*—Specified articles. *Homestead*—To the value of $1500. *Wages*—Not exceeding $100.

STATUTE OF FRAUDS. Contracts for the sale of goods, wares and merchandise for $50 or over must be in writing. Other essential features have been adopted.

INTEREST. Legal rate by statute, 8 per cent; by contract, 12 per cent. *Usury* works a forfeiture of interest.

NEGOTIABLE INSTRUMENTS LAW. Adopted in 1905.

RIGHTS OF MARRIED WOMEN. Same as a femme sole. *Dower Rights*—Dower has been abolished, the following statutory provision being substituted therefor: If there be descendants, widow gets one-half absolutely of both realty and personalty. If no descendants and estate does not exceed $10,000 she gets all. If more than $10,000 she gets three-fourths.

CHATTEL MORTGAGES. Void as to third parties unless filed with the county clerk where property is located.

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